TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 113.

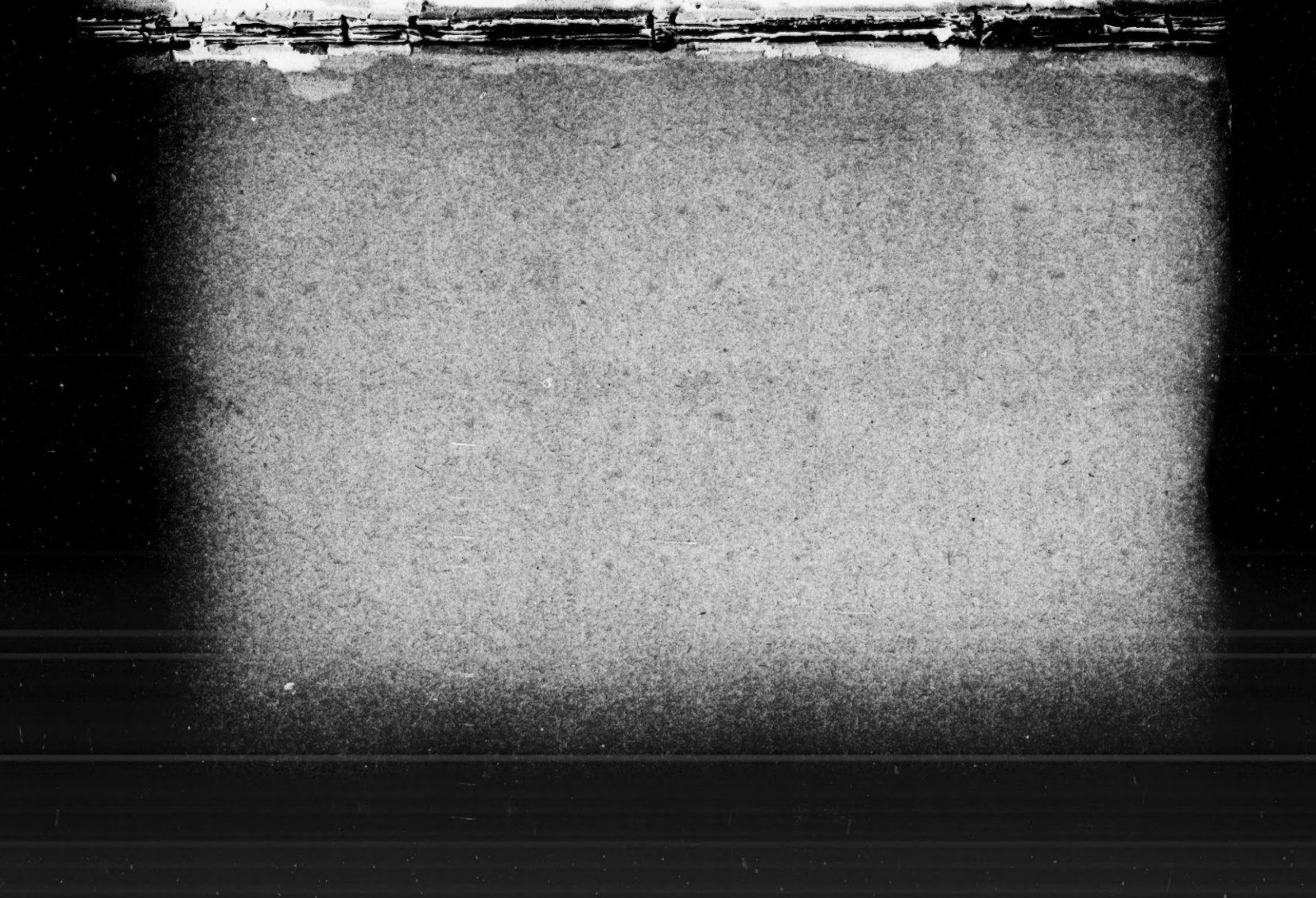
MARY E. R. BOYD, BY HER NEXT FRIEND, JAMES R. BOYD, APPELLANT.

vs.

WILLIAM G. WYLY, CHARLES R. EGELLY, AND FREDERICK W. BOYD, EXECUTOR OF JAMES RAILEY, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 16, 1884.



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1 *Transcript of Appeal.*

UNITED STATES OF AMERICA:

Circuit Court of the United States in and for the 5th Circuit and District of Louisiana.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

Messrs. Mott, Kelly & Saunders, for complainant, appellant; John T. Ludeling, Esq., J. R. Beckwith, Esq., for def'ts, appellees.

Returnable in the Supreme Court of the United States on the second Monday of October, A. D. 1884.

Bill of Complaint. Filed September 10th, 1881.

U. S. Circuit Court, Western District of Louisiana.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

To the judges of the circuit court of the United States for the western district of Louisiana:

2 Mrs. Mary E. R. Boyd, wife of Frederick W. Boyd, of Waukesha, in the State of Wisconsin, and a citizen of said State, by her next friend and son, James R. Boyd, of Waukesha, in the State of Wisconsin, and a citizen of said State, brings this her bill against William G. Wyly and Charles R. Egelly, both of the parish of East Carroll, in the State of Louisiana, and citizens of said State; and thereupon she complains and says—

That on the first day of February, A. D. 1860, James Railey, late of the county of Adams and State of Mississippi, the father of your oratrix, made his last will, in olographic form, and died in the summer of that year, leaving large estates in Mississippi, Arkansas, and Louisiana, which were disposed of by said will, and that by the terms of said will her said father bequeathed to her a certain plantation of great value in the then parish of Carroll and State of Louisiana, known as the Raleigh plantation, situated in township number nineteen north, of range thirteen east, and bounded as follows, to wit: In front by the Mississippi river, in rear by lands now or heretofore belonging to J. B. Beard, on the left or above by lands now or heretofore belonging to Dr. T. W. Lilly, known as the Salem plantation, and below by the lands now or heretofore belonging to the succession of Jonathan Morgan, which lands are more

3 particularly described in a deed of sale to said James Railey, as follows, to wit:

Lots 33, 34, southwest half of section thirty-five, and south half of section thirty-five and so much of lot 36 as will include the quantity of six hundred acres; also the east half of the northeast

quarter of section fifty-five; also that tract of land bought by James Railey from Mrs. E. Savage, containing two hundred and nineteen acres, being part of her plantation previously — and bounded on the lower — of east side by the lane which seperated the lands of said Railey and Savage, the first half of said two hundred and nineteen acres embraced in a uniform strip of the same width running the full depth of Mrs. Savage's tracts, commencing at the bank of the Mississippi river and running due south parallel with the lane aforesaid to land now or heretofore occupied by J. B. Beard, the second remaining half of said two hundred and nineteen acres being embraced by a continuation of the front line up the river bank to a point terminating at the extremity of a piece of woodland which then devided the said Mrs. Savage's front field from the back, and thence due east to the intersection of the north and south line of the first aforesaid half of said two hundred and nineteen acres; also that tract of land bought by James Railey from J. H. D. Bowmar,

4 commencing at the bank of the Mississippi river on the line of the lands then owned by said Bowmar and Railey at the place called the Pecan Grove plantation, thence running due south to the southeast corner of said Railey's said land; thence running east so far that by running a line due north and parrallel with the line first above described to the banks of the Mississippi river as will embrace and include one hundred and fifty acres, and also the balance of the said Bowmar's land, said Pecan Grove plantation, bounded on the east by the lands heretofore belonging to the estate of Jonathan Morgan, on the south by the lands heretofore belonging to J. B. Beard and William Henderson, and on the west by what was previously known as James Railey's Raleigh plantation.

All of which said different tracts of land composed at the time of the death of said James Railey what was then known and is still known as the Raleigh plantation and containing the quantity of sixteen hundred and eighty-eight $\frac{79}{100}$ acres, more or less.

All of which lands, together with the improvements thereon and the movables attached thereto for purposes of cultivation as a cotton plantation, was, by her said father in his suit will of February 1st, A. D. 1860, bequeathed by him to your oratrix.

Your oratrix says that by the terms of said will James G. Carson, of the parish of Carroll, was named executor thereof;

5 that said will was duly probated in the proper court of the parish of Carroll, and that said James G. Carson accepted the trust conferred upon him by said will and took upon himself the burden of the execution of said will.

That an inventory and appraisement of the property of the said succession in the parish of Carroll was made by competent and honest appraisers on the 12th day of December, 1860, and the lands of said plantation were valued by them at one hundred and nineteen thousand three hundred and ninety-three dollars.

Your oratrix further says that the said James G. Carson, executor as aforesaid, died and the executorship thereby became vacant, and thereafter, to wit, on — ——, Frederick W. Boyd, the husband of your oratrix, was, by the proper authority, appointed dative testa-

mentary executor of said last will, and gave bond and qualified according to law and secured letters of executorship in due form; and your oratrix says that on the 16th of July, 1866, the said Raleigh plantation was again inventoried and was appraised by himself and competent appraisers as containing nineteen hundred and thirty-
6 five acres, more or less, of the value of fifty-five dollars an acre, equivalent for the whole plantation to ninety-five thousand six hundred and forty-five dollars; and your oratrix avers that this was a fair and moderate estimate of the value of said plantation at the time said estimate was made, and that said plantation has never at any time since ceased to be of at least the value then placed upon it.

Now, your oratrix avers that in the month of July, 1868, the said William G. Wyly and the said Charles R. Egelly, combining and confederating together with Edward Sparrow and J. West Montgomery, both of the parish of East Carroll, attorneys-at-law, practicing in partnership under the firm name of Sparrow & Montgomery, and with divers other persons, and contriving how to wrong, injure, and defraud your oratrix under the forms of law, and to transfer the apparent title to said Raleigh plantation for a nominal price to the said William G. Wyly, covertly taking advantage of a temporary absence of the said Frederick W. Boyd, dative testamentary executor, instituted, on the 16th of July, 1868, proceedings in the parish court to destitute oratrix's husband, the said Frederick W. Boyd, of his office of executor and to procure the appointment of said Charles R. Egelly as administrator of the succession of the said James Railey.

That the said Frederick W. Boyd was not made party to said
7 proceeding to destitute him either personally or by appointment of a *curator ad hoc* to represent him, and had no notice whatever of the proceeding nor of the subsequent proceeding connected with the sale of said Raleigh plantation hereinafter set forth until after the same had been consum-ated.

Your oratrix shows that on the same day on which the *ex parte* proceedings were instituted to destitute her said husband of the executorship as aforesaid, without any appearance on behalf of her said husband or any joinder of issue, and upon the mere *ex parte* affidavit of J. West Montgomery, one of the lawyers who had instituted the proceeding, an order destituting her said husband of the executorship was rendered, and that thereafter, on the 16th of September, 1868, the said Charles R. Egelly was appointed administrator of the estate of the said James Railey, took the oath and qualified as such, and gave bond, with his attorney, J. W. Montgomery, as his surety.

Your oratrix says that she is advised, and so avers, that the said proceedings for the destitution of her husband from the executorship and for the appointment of the said Egelly as administrator are absolutely null and void, and that by virtue thereof the said Egelly only became administrator *de son tort* of the said estate of the said James Railey and is responsible to your oratrix in this character for the wrong and injury she has sustained by his
8 acts, as hereinafter set forth.

Your oratrix further avers that on the same day that the proceedings for destitution of her husband from the executorship were instituted and ended, to wit, on the 16th of July, 1868, an order was obtained for a new inventory and appraisement to be made of the property of the succession of James Railey before the recorder of the parish, and that such inventory and appraisement was made on fourth September, 1868, and that the said confederates, in pursuance of their fraudulent scheme to effect an apparent transfer of the legal title of said Raleigh plantation to the said William G. Wyly for a price merely nominal, corruptly procured a false and base appraisement of the lands of the Raleigh plantation by ignorant and incompetent appraisers, who either knew nothing of the real value of the property or acted corruptly and dishonestly in undervaluing it.

Your oratrix is informed and believes, and therefore avers, that the said base appraisement was made at the town of Floyd, remote from the river, and that one of the appraisers, Micheal Gingery, is so ignorant and illiterate as to be unable to write or to sign his name, except by mark, and that what purports to be his signature to the appraisement of Raleigh plantation is a forgery.

9 Your oratrix says that the lands of the Raleigh plantation, which were fairly and correctly appraised by competent judges in 1866 as worth fifty-five dollars an acre and which at any time since the war has been and is now worth a rental of ten dollars per *per* annum, was appraised by Gingery and associate at one dollar and a half per acre; a plantation which had been correctly valued in 1866 as worth ninety-five thousand six hundred and forty-five dollars was corruptly and fraudulently appraised in 1868 as worth twenty-five hundred and thirty-three dollars and three cents.

Your oratrix further avers that upon the pretext of its being necessary to pay alleged debts of the succession of large amounts the said confederates obtained from the said parish court an order for the sale of Raleigh plantation, pretending that the debts to be provided for amounted to forty-six thousand dollars, one of the debts alleged being six thousand dollars to Sparrow & Montgomery, as attorneys of the estate.

Your oratrix avers that in pursuance of the fraudulent scheme aforesaid the said confederates obtained an order on the 17th of September, 1868, for the sale of the Raleigh plantation for cash, and that after a single advertisement in an obscure paper, covertly

10 and without the knowledge of your oratrix or of her said husband, the said plantation was, on the 20th of October, 1868, fraudulently adjudicated to the said William G. Wyly for the price and sum of one dollar and a half per acre or for the total sum of two thousand five hundred and thirty-three dollars and five cents, and for which a deed was made to him by the said Charles R. Egelly, administrator *de son tort* as aforesaid, and recorded on the same day in the office of the parish recorder.

Your oratrix avers that the vileness of the price for which the said plantation was adjudicated to said Wyly is a flagrant badge of the unreal and fraudulent character of the transaction, and that the said Wyly, who is a man of education and intelligence, a lawyer by pro-

fession, who has held office as associate justice of the supreme court of Louisiana, was fully cognizant of the true character of the transaction, was a purchaser in bad faith, and is to be regarded in equity as having acquired the legal title to said Raleigh plantation in trust for your oratrix and as responsible to her from the date of his said purchase for the rents and revenues of said plantation.

Your oratrix avers that the whole sum of money for which this magnificent plantation was sold to the said Wyly (except one
11 hundred and eighty-one dollars and eighty cents disbursed for administrator's commissions and court's costs) was paid to the said Sparrow and Montgomery as lawyers of the estate.

Your oratrix further says that shortly after the said adjudication to the said Wyly of said plantation he sued out in the proper court a process known to the law of Louisiana as a monition, alleging that he was an innocent third party, who had purchased the said plantation in good faith, and praying for a judgment of homologation of title, which was accordingly entered which judgment he pretends has cured all vices and defects in his title to said Raleigh plantation; whereas your oratrix is advised, and so charges, that under the law of Louisiana process of monition and judgement of homologation of title thereunder extend only to the cure of defects of form and not to the ratification and validation of acts of fraud and spoilation such as characterized the pretended purchase as aforesaid of said Raleigh plantation by the said Wyly.

Your oratrix avers that at all times since the said Wyly has been in possession of said plantation, to wit, since the 20th October, 1868, it has produced and still produces large fruits and revenues, for which she avers the said Wyly is accountable to her.

She avers that under the apparent legal title so as aforesaid fraudulently acquired by him he withholds from her possession of
12 said Raleigh plantation and the fruits and revenues thereof, and she doubts not will so continue to do until compelled by decree of this honorable court to make restitution.

All of which actings and doings and pretenses of said defendants are contrary to equity and good conscience and tend to the manifest wrong and oppression of your oratrix.

In consideration whereof, and forasmuch as your oratrix is remediless at end by the strict rules of common law and is receivable only in a court of equity, where matters of this nature are properly cognizable and receivable, to the end, therefore, that your oratrix may have that relief which she can only obtain in a court of equity and that the said defendants may answer the premises, but not under oath or affirmation, the benefit of which is expressly waived, your oratrix prays that she may be authorized to maintain this suit by her son and next friend, Charles R. Boyd, and that the court will decree that the document dated February 1st, 1860, purporting to be the last will and testament in olographic form of your oratrix's late father, James Railey, and duly probated as such in the proper court of the parish of Carroll, is a valid will, and that the bequest therein of the Raleigh plantation in the parish of East Carroll to your oratrix is a valid bequest and relates to the Raleigh

plantation particularly described in the stating part of this bill, and constitutes a valid and subsisting title in your oratrix to said plantation under which she is entitled to be put in possession of said plantation as owner thereof,
13 and that the court will decree that the said pretended sale of said plantation by said Charles R. Egelly, claiming to act as administrator of the estate of said James Railey, to the said William G. Wyly on the said 20th of October, 1868, was collusive and fraudulent and null and void, and that William G. Wyly was in bad faith in pretending to purchase said plantation, and well knew at the time that the paltry sum collusively given by him as the price of his purchase was no equivalent whatever for the property; that he be decreed to deliver possession of said plantation to your oratrix, and to account to her, under the direction of the court, for the fruits and revenues received by him from said plantation since he has been in possession thereof, to wit, since the 20th of October, 1868; and that there be a decree in favor of your oratrix and against said Wyly for the amount which shall be found due by him upon account for said fruits and revenues heretofore received by him; and that a receiver be appointed to take charge of said plantation *pendente lite* to account to your oratrix for rents and revenues which may be derived from said plantation during the pendency of this suit—

May it please your honors to grant unto your oratrix writs of subpœna, to be addressed to the said William G. Wyly and the said Charles R. Egelly, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand —, perform, and abide such further order, decree, or direction therein as to your honors shall deem meet.

(Signed) MOTT & KELLY, *Solicitors.*

14 *Subpœna in Chancery to Wm. G. Wyly. Issued September 13th,* 1881. *Filed September 19th,* 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summons William G. Wyly and Charles R. Eggelly, residing in the parish of East Carroll, to appear before the judges of the fifth judicial circuit court of the United States of America, western district of Louisiana, at a circuit court to be holden on the first Monday of October, A. D. 1881, at Monroe, then and there to answer a bill in chancery filed against them, wherein Mary E. R. Boyd, wife of Frederick W. Boyd, by her next friend, James R. Boyd, is complainant and William G. Wyly and Charles R. Eggelly are defendants.

Herein fail not, and have you then and this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of
15 the Supreme Court of the United States of America, at the city of Monroe, this 13th day of September, A. D. 1881, and the one hundred and sixth year of American Independence.

[SEAL.] (Sig'd) JULIUS ENNEMOSER, *D'y Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, fifth circuit and western district of Louisiana, at the city of Monroe, on or before the first Monday of November, A. D. 1881; otherwise the bill may be taken *pro confesso.*

(Sig'd) JULIUS ENNEMOSER, *D'y Clerk.*

Marshal's Return.

Received in office on the 13th day of September, 1881, and on the 16th day of September, 1881, I made service by handing a certified copy of the within subpœna in chancery to Mr. A. M. Nelson, a man over twenty-one years old, residing at the domicil of Wm. G. Wyly, he being absent in the parish of East Carroll, Louisiana, about
16 one hundred and fifty miles from Monroe, Louisiana.

Monroe, September 19th, 1881.

(Signed) JAMES C. WEAKS,
U. S. Marshal.

Subpœna in Chancery to Charles R. Egelly. Issued September 13th, 1881. *Filed September 13th,* 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summon William G. Wyly and Charles R. Egelly, residing in the parish of East Carroll, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, western district of Louisiana, at a circuit court, to be holden on the first Monday of October, A. D. 1881, at Monroe, then and there to answer a bill in chancery filed against them, wherein Mary E. R. Boyd, wife of Frederick W. Boyd, by her next friend, James R. Boyd, is complainant and William G. Wyly and Charles R. Egelly are defendants.

17 Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Monroe, this 13th day of September, A. D. 1881, and the one hundred and sixth year of American Independence.

[SEAL.] (Signed) JULIUS ENNEMOSER, *D'y Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit

court, fifth circuit and western district of Louisiana, at the city of Monroe, on or before the first Monday of November, A. D. 1881; otherwise the bill may be taken *pro confesso*.

(Signed) JULIUS ENNEMOSER, *D'y Clerk.*

Marshal's Return.

Received in office on 13th day of Sept., 1881, and on same day made personal service by handing a certified copy of *of*
18 the within subpœna in chancery to Charles R. Egelly in person in the city of Monroe, Louisiana.

Monroe, Sept. 13th, 1881.

(Signed) JAMES C. WEAKS,
U. S. Marshal.

Entry in Chancery Order Book.

MARY E. R. BOYD
vs.
WM. G. WYLY and CHAS. R. EGELLY. } No. 1.

MONROE, *Dec. 5th*, 1881.

In this cause, no demurrer, plea, or answer having been filed on behalf of either of the defendants, on motion and demand of Boatner & Liddell, solicitors for plaintiff, a decree *pro confesso* is entered against both defendants.

19 *Petition, Affidavit, & Order. Filed Feb'y 1st, '82.*

Circuit Court of the United States, Western District of Louisiana.
In Equity.

MARY E. R. BOYD *vs.* WM. G. WYLY *et al.*

To the circuit court of the western district of Louisiana, sitting at Monroe, Louisiana:

The defendants in the above-entitled suit respectfully move that the order *pro confesso* taken on the fifth of December last, when the court was not in session, and granted by the clerk may be set aside, and that respondents may be allowed to file such pleas and answers as justice and equity may require.

They aver that the subpœnas were served on the 13th of September on Egelly, and at the domicil of Wm. G. Wyly, on the 16th of September last; that Jno. T. Ludeling was requested by letter to make appearance for defendants, which he did on the first return day after service of subpœnas, but having no knowledge of the facts of the case he could not prepare an answer; that Wm. G.
20 Wyly, the real defendant in interest in this suit, was prevented by sickness from attending to the business till after the rule *pro confesso* had been taken, and that he has recently had consultations with his solicitor, Jno. T. Ludeling, and prepared the

pleas which defendants are now ready to file, and they ask leave of the court to file the same without unnecessary delay, and they pray for all necessary orders and general relief.

Feb'y 1st, 1882.

(Signed) JNO. T. LUDELING,
Solicitor for Def'ts.

Affidavit.

Wm. G. Wyly, one of the defendants in the above-entitled cause, makes oath that the facts and allegations in the foregoing petition or motion are true and correct.

(Signed) W. G. WYLY.

Sworn to and subscribed before me this 16th day of January, 1882.

[SEAL.] (Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, Eastern Dist. of La.

Order.

UNITED STATES OF AMERICA, *State of Louisiana:*

21 Circuit Court in and for Western District of Louisiana.

The foregoing application being considered, it is hereby ordered that *that* the order *pro confesso* taken on the 5th of Dec., 1881, be set aside and annulled; and it is further ordered that defendants be permitted to file such pleas and answers as they might or could have made before said order *pro confesso* had been taken upon the payment of costs accrueing from service of subpœna to the day of filing this order, and on condition that said pleas or answers shall be filed before rule day in Feb'y, 1882.

(Sig'd) DON A. PARDEE,
Circuit Judge.

Jan'y 18th, 1882.

Pleas and Exceptions. Filed 1st Feb'y, '82.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.
In Chancery.

MARY E. R. BOYD
vs.
WM. G. WYLY and CHAS. R. EGELLY. } No. 1.

To the circuit court of the United States, sitting at Monroe, La.:

22 The defendants, William G. Wyly and Charles R. Egelly, residents of the parish of East Carroll, State of Louisiana, and citizens of said State, by protestations, not confessing nor in any way acknowledging all or any of the matters in and by said bill of complaint set forth and complained of to be true in such manner and

form as same are thereby set forth and alleged, do jointly and severally make the following pleas and exceptions, to wit:

1st. They aver that the complainant has no standing in this court, because she is a married woman and sues without the authorization of her husband or of this court, and because, by the will under which she claims title to the property demanded (a copy of which is hereto annexed and made a part of this exception or plea and marked "Exhibit A") she is not to receive anything from the estate till after the debts of the testator and the special legacies made in the will shall have been paid; and the truth is that neither the debts nor the legacies have been paid; and further because the succession was and is solvent.

2nd. The complainant has never been recognized as heir or legatee under the will; nor has an order of the probate court to put her in possession of the property of the estate been granted, which is a prerequisite to authorize her to take or claim any property of the succession. Revised C. code, 1012–1671.

23 3rd. Respondents further plead that the succession of James Railey is still open and unsettled in the probate court of the parish of East Carroll; that although Charles R. Egelly, one of the defendants, did file his final account of his administration, and was honorably discharged from his trust, still the succession was again opened on the application of Sterling T. Austin, agent and attorney-at-law, representing two of the beneficiary heirs and legatees of James Railey, to wit: H. O. Railey, son of the testator, and the widow of *of* C. R. Railey, another son of the testator, and also representing creditors of the estate, and he was appointed administrator of said succession; he qualified and gave bond, and afterward died without closing the administration of said succession.

Respondents aver that Frederick W. Boyd, the dative testamentary executor and husband of the complainant, collected a large sum of money for the rents of the plantations "Raleigh" & "Carondelett," of the testator, upwards of fifteen thousand dollars, they have been informed and they believe, and the said Boyd himself cultivated one or both of the plantations in 1867 on his own account, and for which he owes rents; and they are informed and they believe that he and the complainant collected a large sum of money from the United States, upwards of fifty thousand dollars, on account of cottons taken from the estate of James Railey during the rebellion, and which has not been accounted for.

24 Besides this, the inventory made when said Boyd was appointed shows there were mules and other personal property received by him amounting to about two thousand dollars, which has not been accounted for.

The succession being still open and unsettled in the parish of East Carroll, the probate court of said parish alone has jurisdiction in the matter of said succession, and that court alone can put the complainant in possession of property given by the will to her, if she is entitled to any, which is denied.

4th. Respondents further plead that the administrator of the succession of James Railey, as well as the other heirs and legatees of

James Railey, are necessary parties. The heirs or legatees are H. O. Railey, the legal representative of Charles R. Railey, and Ernest Railey or his legal representatives, should he be dead, and the special legatees mentioned in the will already made a part hereof, and they have not been made parties to this suit.

5th. Respondents further plead the prescription of five years under articles 3542 and 3543 of the civil code, and also the prescription of ten years under article 3474 of the civil code, having acquired the property in good faith at public auction, made under an order of judgment of a court of competent jurisdiction by an officer of the court, for a valid consideration, and having complied
25 fully with the terms of the sale and possessed the property in good faith under a just title, perfect in form and translation, of property, since the 20th of October, 1868.

6th. Defendants further plead the prescription of one year under article 1994 of the civil code.

7th. Respondents further plead that complainant has not tendered to W. G. Wyly or offered to return to him the price paid by him for the property before filing this suit, and this is a prerequisite to the institution of this suit under the laws and jurisprudence of this State, the said purchase-money having been applied to the payment of debts of the succession.

8th. That the judgment destituting Frederick W. Boyd dative executor, the judgment appointing Charles R. Egelly administrator of the estate of James Railey, the judgment ordering the sale to pay the debts set out on the statement and tableau of debts made on the 17th of Sept., 1868, and the judgments homologating the final account of Charles R. Egelly, distributing the proceeds of the sale and discharging him from his trust, dated 10th of May and 7th of July, 1869, were all judgments of the probate court of the parish of Carroll, which had jurisdiction of the property and of the succession, and they cannot be attacked collaterally or in the Federal courts; but they are binding upon all persons until revoked on appeal or by the court which rendered them and are now *res*
26 *-judicata* and absolutely conclusive of the matters determined therein; and they plead the prescription of twelve months against any action to annul any of said judgments under article 613, code of practice.

And the defendants, in conformity with the rule of practice for the courts of equity (number 32), in reply to that portion of the bill which charges them with fraud and combination, deny all said charges and the statements upon which they are based, but more especially the following: They deny that in the month of July, 1868, or at any other time, they combined and confederated together with Sparrow and Montgomery, attorneys, and other persons, contriving how to wrong, injure, or defraud complainant under the forms of law or otherwise. They aver that the said W. G. Wyly was absent from the parish during the months of June, July, and August and part, if not all, of the month of September, 1868, and that he had no knowledge relative to any of the matters or transactions, as charged in the bill, relating to the destitution of Fred-

erick W. Boyd, dative executor, or of the appraisement of the property or of the order for the sale of the property or of anything done in reference to said succession sale except that he
27 was present on the day of sale at the court-house when said property was offered for sale, and that he bid upon the property in good faith and the same was adjudicated to him at its appraisement, which was then considered a fair price, which he paid.

The said W. G. Wyly declares that he took no part in anything done in connection with the mortuary proceedings in the succession of James Bailey, nor was he connected with the proceedings to destitute said F. W. Boyd, and he had no knowledge in regard to what had been done in the succession aforesaid further than that the property was advertised for sale under an order of a court of competent jurisdiction, and which was adjudicated to him at what the officer declared was its appraised value, which was then considered a fair price. He avers that he never talked even with Charles R. Egelly on the subject of the sale, and that he had no knowledge at the time of the sale as to who had appraised the property, or whether they had affixed their signatures to the appraisement or authorized them to be affixed or not, and that he had nothing whatever to do with the appraisement, either directly or indirectly; and he avers that he did
28 not know that Gingery was one of the appraisers of the property until he saw the statement in the bill of complaint. The said W. G. Wyly further declares that he never had any conversation or consultation with either Sparrow or Montgomery or any one else in reference to the proceedings to destitute F. W. Boyd, or in reference to the appointment of Egelly administrator, or in reference to the appraisement or sale prior to the said sale. He declares most solemnly that the charges against him of combination, conspiracy, and fraud are entirely without foundation and slanderous. The respondents aver that the charge that F. W. Boyd was removed without notice and *ex parte* seems to be untrue, inasmuch as the record of said proceedings shows that the said F. W. Boyd filed an answer *an* opposition to the appointment of C. R. Egelly administrator, and the judgment of the court removing Boyd and appointing Egelly shows that a judgment rendered contradictorily with Boyd. They further aver that the charge that the said Boyd was removed upon the *ex parte* affidavit of W. J. Montgomery is untrue and without foundation, inasmuch as the judgment upon its face shows that it was rendered upon competent evidence. They
29 further aver that the proceedings to destitute F. W. Boyd, the dative executor of James Railey, were not absolutely null and void, as alleged, but, on the contrary, they seem to be regular and valid, and your respondents know nothing to the contrary. They specially deny that Charles R. Egelly became administrator *de son tort* and became liable to complainant in any manner; and they aver that he was appointed by a court of competent jurisdiction and qualified according to law, and his acts were performed in good faith and are valid, and were ratified and homologated by a judgment of

a court having jurisdiction of the succession, and he was honorably discharged as administrator and his bond cancelled.

Respondents especially deny that there was any collusion or fraud practiced by them or either of them or by their procurement or to their knowledge in the making of the inventory on the 4th of September, 1868. They aver that they were both absent from Floyd, the parish seat, where it was made at the time it was made, and they had no knowledge as to who the appraisers were whom the recorder appointed, nor had they any communication with the recorder or with any one else in reference to the appraisers or appraisement;
30 and they further say that the said appraisement was made prior to the appointment of C. R. Egelly as administrator.

The charge that the appraisers were incompetent or corrupt in making the appraisement is wholly untrue and slanderous. They were selected by the recorder of the parish in the discharge of official duty under the law of the State and an order of the court, and the appraisement was honest, fair, and legal, and the appraisers were old citizens and residents of the parish, of good standing, well acquainted with the lands in the parish, and men of good practical sense and judgment, although one of them may have been illiterate.

Respondents know nothing about the appraisement, never having had anything to do with it, but they believe that the appraiser, Michael Gingery, either signed the appraisement or authorized his signature to be put to it, or else the recorder, a sworn officer, would not have so declared under his official oath and signature and seal of office.

They further say that if there be any irregularity or illegality in said appraisement it occurred prior to the order of sale rendered by the court which directed the property to be sold on this in-
31 ventory and appraisement, and that said judgment validated the same.

They further aver that all illegalities or irregularities in the appraisement, if any existed, which is denied, were caused by the monition which was sued out by W. G. Wyly and duly homologated on the 5th of January, 1869. The respondent, W. G. Wyly, who purchased the property, denies that he had anything to do with the procuring of the order for the sale, and he avers that the charge against him in the bill is unfounded in fact. The respondent Egelly avers that he was the administrator of the succession, which owed valid judgments for sums aggregating upwards of forty-six thousand dollars, exclusive of interest, and that he asked for an order to sell property to pay the debts in good faith, and at the instance of creditors, one of whom, the Citizens' Bank, joined in the application. There were no funds to pay even the law charges without a sale, the dative executor, the husband of the complainant, having used the revenues of the property and failed to account therefor, and absconded from the State, although ordered by the court on the 23d of March, 1867, to render an account.

He denies that he colluded with any one or that he was
32 guilty of any fraud or wrong in the matter.

Respondents further aver that the innuendo or charge that

the claim of Messrs. Sparrow and Montgomery for six thousand dollars was unjust or fraudulent is reckless and unfounded in fact. They aver that said amount was adjudged to be due to said attorneys for professional services in the succession from its opening prior to the rebellion up to the 10th of November, 1866, and said judgment was rendered on the 6th of April, 1867, on the final account of the executor of James Railey, Dr. J. G. Carson, contradictorily with the husband of the complainant, Frederick W. Boyd, dative executor of James Railey, and contradictorily with the complainant and other heirs, represented by Charles A. De France, attorney for absent heirs. Respondents aver that the order of sale of the 17th of Sept., 1868, was not obtained in pursuance of any fraudulent scheme with anybody, by themselves or through any one, but the same was obtained, as aforesaid, on the application of the administrator and the Citizens' Bank, a creditor, to pay debts and in good faith. They deny that there was but a single advertisement "as charged," but they aver that the property was advertised
33 regularly during more than thirty days in the "Elton Eagle," the official journal of said parish, according to law, there being no other paper published in the parish at the time.

Respondents further deny that the property was fraudulently adjudicated; but, on the contrary, they aver that on the day of sale, the 20th of October, 1868, the property was offered for sale at public auction, at the court-house door, within the hours prescribed by law, and after having complied with all the requirements and forms of law the same was adjudicated to W. G. Wyly for the full amount of the appraisement, he being the last and highest bidder, in good faith. Respondents further aver that the charge that the "vileness of the price" is a badge of fraud, and that the intelligence of the bidder is evidence of his having knowledge of the true character of the transaction is mere vituperation and abuse without stating any fact upon which to base his complaint, and is utterly unfounded in fact.

They aver that, on the contrary, the said W. G. Wyly had no knowledge of any wrong, illegality, or fraud in the matter connected with the sale, and so far as he knew and now knows everything had been done regularly, honorably, and according to law; and
34 he denies that the price was "vile" or disproportionately low at the time of the sale, as many plantations had been sold before and were sold subsequently at public and private sales for prices as low as the price bid at said sale. They deny that he was a purchaser in bad faith, but aver that he was a *bona fide* buyer for a valuable consideration.

Respondents further aver that the charge of complainant that the greater part of the money arising from the sale was paid to Sparrow and Montgomery, "as lawyers of the estate," is unfair and unjust in the sense that it is intended the statement to be understood, to wit, that they were paid this sum for their services for representing the administrator Egelly in provoking the sale and filing the account of Egelly, whereas the truth is that they had a judgment for their fees amounting to $6,000.00, exclusive of interest, for services rendered the succession, which was inventoried prior to the war for

over four hundred thousand dollars. This judgment was rendered, as already stated, contradictorily with the dative executor, F. W. Boyd, and the complainant and other absent heirs; and this claim was ranked as a claim to be paid by preference, being for law
35 services in the succession.

Respondents admit that the purchaser, W. G. Wyly, sued out a monition under the laws of the State, which was duly homologated and confirmed, but they deny that "he pretends that the same has cured all vices and defects in his title," as he has never admitted that there was any vice or defect whatever in his title. He avers that he sued out the monition out of caution, not having the time and the opportunity to examine the proceedings at the time; but they now aver that if there be any illegality or irreg-larity in the proceedings which culminated in the sale (and they protest that they are ignorant of any) the same were cured by the confirmation of the sale and the homologation of the monition under the statute of this State.

Respondents aver that they have made the pleas above-mentioned in good faith and not for delay, and have answered the charges of fraud and combinations, in compliance with rule No. 32, without *without* intending to waive any of said pleas, and they pray that their several pleas above mentioned be tried before they be required to make their answer; that the pleas be maintained, and that
36 the complainant's bill may be dismissed, and they pray for judgment for costs against the complainant.

They further pray that in the event the court should not dismiss the suit on the pleas and exceptions above stated, then that your respondents be allowed to file their answer and set forth their defenses on the merits of the case more fully, and they pray for general relief, etc.

(Sig-ed) JNO. T. LUDELING,
Solicitor for Defendants.

STATE OF LOUISIANA, *Parish of Ouachita:*

Circuit Court in and for the Western District of Louisiana.

MARY E. R. BOYD
vs.
WM. Y. WYLY *et al.* } No. 1.

Personally came and appeared before me, the undersigned authority, W. G. Wyly, one of the defendants in the above-entitled suit, who makes oath that the facts and allegations in the foregoing petition are true and correct to the best of his knowledge and
37 belief, and he further swears that the pleas are not interposed for delay, and that they are true in point of fact.

(Sig'd) W. G. WYLY.

Sworn to and subscribed before me this 16th day of January, 1882.

[SEAL.] (Sig'd) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, Eastern District of Louisiana.

I do hereby certify that, in my opinion, the several pleas and exceptions made in behalf of the defendant's in the case of Mary E. R. Boyd *vs.* W. G. Wyly *et al.*, No. 1 on the docket of the circuit court for the western district of Louisiana, are well founded in point of law.

(Sig'd) JNO. T. LUDELING,
Solicitor and of Counsel.

38 "*Ne varietur.*"

Parish of East Carroll, La., Nov. 3rd, 1886.

(Sig'd) JOHN L. CHEATHAM, *Clerk.*

EXHIBIT "A."

STATE OF MISSISSIPPI, *County of Adams:*

OAKLAND, *Feb'y 1st*, 1860.

I, James Railey, of the county and State before mentioned, being of sound mind and disposing memory, do make, publish, and declare this instrument of writing to be my last will and testament, in the olographic form, and desire all courts having jurisdiction over wills in Mississippi, Louisiana, or Arkansas will not in any way interfere in its full execution according to its letter, without any regard to forms of law or technicalities, to wit:

At my death I give to my wife, Matilda S. Railey, all the estate I may own of every kind in the State of Mississippi, and give all in fee simple, except my slaves, Auguste and Sarah, and their children, which said slaves and the future increase of Auguste & Sarah I give to my wife during her natural life; and then the slaves with their future increase I give to my brother, Logan Railey, of Kentucky, knowing he will treat them with kindness and
39 give them all the comforts they require and all the lenity from hard work they may merit.

It is my will that all my property in Louisiana & Arkansas be kept together as I may leave it until all my just debts are paid, and desire that my friend, James G. Carson, of Carroll parish, take the two plantations, Raleigh & Carondelet, under his management, and that my friend, James Carson (clerk's paraph—*ne varietur*, parish of Carroll, Nov. 30th, 1860—Jno. L. Cheatham, cl'k), Jr., of Natchez, take my Deerfield plantation in Arkansas, under his supervision until my debts are paid; and he, the said James Carson, is requested hereby to make a charge for his services, and his charge not to be questioned, but paid out of the proceeds of the crop.

After my debts are paid, together with any legacies I may make, I wish my friend-, James G. & James Carson, Jr., to divide as equally as possible my Raleigh and Carondelett plantations, giving Raleigh to my daughter, Mary E. R. Boyd, with all the negroes and stock, &c., and to my son, H. Otey Railey, Carondelett, with negroes, stock, &c.

And should my grandson, Ernest H. Railey, survive to grow to the age of twenty-one years my friends above named, James G. & James Carson, Jr., will give him possession of the Arkansas plan-

tation called "Deerfield," but should my grandson not survive to the age of twenty-one years, then the Arkansas place called Deerfield is to be sold in block or otherwise as may be thought best to the interest of my estate.

40 It is humiliating to me to say what course I wish taken in regard to my son Charlie Randolph Railey. I desire my friend, James G. Carson, to pay to Charlie the sum of one thousand dollars per annum, in quarterly payments, & give as a justification on my part for so doing and to give to the courts a full evidence of the necessity of this course the following statement:

Charlie was tried for murder and confessed the act, and nothing but the proof as was given by his school teacher & Dr. Metcalfe, my family physician, that Charlie had not mind enough to be responsible for his acts saved him from the penalties of the law. Under this state of things I feel it my duty not to place property or funds (only for his support) in his possession. The amount to be paid to Charlie will be retained one-third from each Carondelett, Raleigh, and Deerfield, and should events occur to make the amount annually greater, my friend, James G. Carson, is hereby authorized to *to* all necessary in the matter.

I forgive M. E. R. Boyd all the account I have charged to her.

After all my just debts are paid I give to niece, Belle Railey, and to my niece, Cornelia Railey, both daughters of Logan Railey, of Ky., each the sum of five thousand dollars.

Signed the day and date above written, at Oakland.

(Signed) J. RAILEY.

41 NOTE.—There are many slaves secured to Mrs. Railey by wills, deeds, &c., and some have intermarried with some of my own. Mrs. R. and myself have exchanged many, and she may continue to do at pleasure, excepting Sarah & August & children. See list of exchange on my old tax book made out by E. Staunton & signed by Mrs. M. S. R. & J. R. in Mr. Staunton's presence as witness.

Clerk's Paraph.

Ne varietur.

Parish of Carroll, Nov. 3rd, 1860.

JOHN L. CHEATHAM, *Clerk.*

THE STATE OF MISSISSIPPI, *Adams County,* } *ss:*

In the Probate Court of said County. At the Sept'r Term, A. D. 1860.

In the matter of a certain instrument of writing purporting to be the last will and testament of James Railey, deceased.

Personally appeared, in open court, at the above-stated term, S. Dryden Stockman, Audley C. Britton, and James N. Stockman, who, having been first duly sworn, severally deposed and said that they

were well acquainted with the handwriting of James Railey, late of said county, deceased, having often seen him write and sign his name, and that the whole of the foregoing instrument of writing, as well as the signature thereto, purporting to be the last will and testament of said James Railey, is in the proper handwriting of the said James Railey, and that, on the 1 day of February, 1860, the day of the date of said instrument, the said James Railey was twenty-one years and upwards of age, of sound and disposing mind.

(Signed) S. D. STOCKMAN.
" A. C. BRITTON.
" JAS. N. STOCKMAN.

42 Sworn to and subscribed before me in open court September 26th, 1860.

(Signed) RICHARD A. INGE, *Clerk.*

Clerk's Paraph.

Ne varietur.
Parish of Carroll, Nov. 3d, 1860.

JNO. L. CHEATHAM, *Clerk.*

A certain instrument of writing purporting to be the last will and testament of James Railey, deceased, was brought into court, proven by the testimony of S. Dryden Stockman, Audley C. Britton, and James N. Stockman to be wholly in the handwriting of said James Railey and ordered to be recorded as his last will and testament.

THE STATE OF MISSISSIPPI, *Adams County,* } *ss:*

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify that the foregoing four pages contain a true and perfect copy of the original last will and testament and the proof thereof of James Railey, deceased, and the order of the court made thereupon, as the same remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and seal of said court, at Natchez, the 19th day of October, A. D. 1860.

(Signed) RICH'D A. INGE, *Cl'k.*

THE STATE OF MISSISSIPPI, *Adams County,* } *ss:*

I, Reuben Bullock, judge of the probate court, sole and presiding of said county and State, do hereby certify that Richard A.
43 Inge, whose genuine signature appears to the foregoing certificate and attestation, is and was at the date thereof clerk of said court, duly elected, qualified, and commissioned; that his said certificate and attestation are in due form of law, and that all his acts in the premises are and ought to be entitled to full faith and credit in judicature and the*art.*

Given under my hand and seal this 19th day of October, A. D. 1860.

(Sig'd) R. BULLOCK, *Judge.* [SEAL.]

Clerk's Paraph.

"*Ne varietur.*"
Parish of Carroll, La., Nov. 3rd, 1860.
(Sig'd) JOHN L. CHEATHAM, *Clerk.*

(Endorsed:) Succession of James Railey. Will & probate. Filed Nov. 3rd, 1860. John L. Cheatham, clerk.

A true copy.
[SEAL.] (Sig'd) F. H. G. TAYLER,
D'y Clerk 8th District Court, Parish of East Carroll, Louisiana.

Motion to Dismiss. Filed M'ch 7th, 1882.

Circuit Court of the United States for the Western District of Louisiana.

Mrs. MARY E. R. BOYD *vs.* WM. G. WYLY *et als.*

44 The defendants move that this suit be dismissed under rule 38, the pl't'ffs or complainants having failed to reply to the same or set the pleas or demurrers for argument, and thereby having admitted the truth and sufficiency thereof.
(Sig'd) JNO. T. LUDELING,
Of Counsel.

Entry in Chancery Order Book, Tuesday, M'ch 7th, 1882.

MARY E. R. BOYD
vs.
WM. G. WYLY and CHARLES R. EGELLY. } No. 1.

In this cause, pl't'ff having failed to reply to the pleas & demurrer filed by defendant or to set the same for argument, on motion of def'ts' counsel the bill filed in this case is dismissed.

Notice of Motion. Filed March 28th, 1882.

In Circuit Court of the U. S. for the Western District of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
W. G. WYLY *et al.* } No. 1.

To John T. Ludeling, Esq., defendants' solicitor:

Take notice that the court will be moved on behalf of complainant, at Monroe, La., at the April term, 1882, on the opening of the court, on Monday, April 3rd, 1882, or as soon thereafter as counsel can be heard, to order that the papers herein filed by the defendants on the 1st of Feb'y, 1882, purporting to be pleas and exceptions to the bill of complaint herein, be taken from the file, for the reason that prior to the filing of said papers, to wit,

on the 5th day of December, 1881, a decree taking said bill *pro confesso* had been duly entered in the order book in said cause, which decree has never been lawfully vacated or opened so as to admit the said defendants to demur, plead, or answer to the bill, and to order that the entry *entry* caused to be made on the order book on behalf of said defendants on the 7th of March, 1882, dismissing the bill on the suggestion that complainant had failed to reply or to set the said pleas down for argument within the time allowed by the rules of court after the filing thereof, be vacated and avoided as having been improperly and improvidently entered, for the reason that after the entry of said decree *pro confesso* on the 5th of December, 1881, the said defendants had no right to file any pleadings to said bill, except with leave of court, after having had said decree *pro confesso* set aside in a proceeding contradictorily with complainant, which was never had, and that at the same time the court will be moved to enter a final decree in the cause in conformity to the said decree *pro confesso*.

(Signed) MOTT, KELLY AND SAUNDERS,
Complainant's Solicitors.

M. J. Liddell, being sworn, says that he served a true copy of the foregoing notice upon John T. Ludeling, Esq., defendants'
46 solicitor, by handing the same to him in person at Monroe, on the 28th of March, 1882.

(Signed) M. J. LIDDELL.

Sworn to and subscribed before me this the 28th day of March, 1882.

[SEAL.] (Signed) JULIUS ENNEMOSER.
D'y Clerk.

Motion at Rules. Filed 3rd April, 1882.

In the Circuit Court of the United States for the Western District of Louisiana, at Monroe, April 3rd, 1882, at Rules.

MARY E. R. BOYD, by Her Next Friend, et-.,
vs.
WM. G. WYLY and CHARLES R. EGELLY.

The court is moved on behalf of complainant, upon the face of the entries in the order book and upon the affidavit herein filed, to order that the *ex parte* order herein granted on the 18th of January, 1882, setting aside and annulling the decree *pro confesso* herein entered on the 5th of December, 1881, and permitting defendants to file such pleas and answers as they might or could have made before said *pro confesso* had been taken, be vacated and avoided for as having been erroneously and improvidently granted without notice to complainant or to her solicitors of application for such order having — made, as is required in such cases by the rules of practice for the courts of equity established by the Supreme Court of the
47 United States; and for the further reason that solicitors for complainant were in New Orleans at the time the *ex parte*

application for said order was made to the circuit judge and obtained without any notice of such application being given to them, as required by the aforesaid rules.

And the court is further moved for the reasons aforesaid to order that said paper termed pleas and exceptions to the bill be taken from the file; and the court is further moved that an order be entered vacating the order entered on behalf of defendants on the order book Tuesday, March 7th, 1882, dismissing the bill herein on the suggestion that complainant had failed within the delay allowed by the rules of court to reply to said pleas or to set said pleas and demurrer down for argument, for the reason that the order vacating the decree *pro confesso* of the 5th of December, 1881, had been improperly and unlawfully obtained as aforesaid, and that until said decree *pro confesso* is lawfully and regularly set aside no defensive pleading can be filed, and that after it is set aside regularly no pleading other than answer can be allowed to be filed on behalf of defendants; and for the further reason that no entry of the filing of said pleas and exceptions was made on the order book at the time of their being filed on the 1st of February, 1882, or afterwards.

48 And that at the time of the entry of said order in the order book dismissing the bill upon suggestion of the complainant, having failed to set the demurrer and pleas down for argument or to reply to the pleas within the legal delay, no notice whatever of the filing of said pleas and exceptions had been given to the plaintiff or her solicitors by entry in the order book or by any other way.

And the court is further moved to order that the bill of complainant and the decree *pro confesso* thereon of the 5th of December, 1881, be reinstated, and that a final decree be entered herein in conformity to said decree *pro confesso* at the next term of the court, to be holden at Monroe.

(Signed) MOTT & KELLY,
Sol'rs for Complainant.

Henry B. Kelly, being sworn, says that he is a member of the law firm of Mott & Kelly, solicitors for complainant in this cause, and that he and his associate, Robert Mott, Esq., were both in New Orleans at the time the *ex parte* order of the 18th of January, 1882, referred to in the foregoing motion, was obtained, and that about that time he met the defendant, Wm. G. Wyly, on several occasions, and that no notice of said application to set aside the decree *pro confesso* and to be allowed to plead or answer was ever given

49 to himself or his firm or to Messrs. Boatner & Liddell, representing them in Monroe in this matter, or to the complainant herself, but that the whole proceeding was entirely *ex parte* from begin-ing to end.

(Signed) HENRY B. KELLY.

Sworn and subscribed before me this 1st day of April, A. D. 1882.
[SEAL.] (Sig'd) JULIUS ENNEMOSER,
D'y Clerk.

50 *Application for Rule to Show Cause. Filed June 26th*, 1882.

United States Circuit Court for Western District of Louisiana.

MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

To the hon. judges of said court:

The complainant in the above case, with respect, moves this hon. court to grant a rule on the defendants to show cause, on Monday next, in open court, why the orders, motions, and decrees as prayed for in the rule and notice filed in this case by complainant's solicitors on the 3rd of Apr'l, 1882, should not be granted as prayed for therein, to wit, that the order granted by the court *ex parte* on the 18th Jan'y, 1882, setting aside the judgment *pro confesso* in favor of complainant on the 5th Dec., 1881, be vacated as improperly & improvidently granted; that the pleas and exceptions filed herein by the defendants on the 1st of Feb'y, 1882, be taken from the file, and that the judgment "*pro confesso*" in favor of complainant, entered on the 5th of Dec., 1881, be made final & confirmed. Said motion at rules of 3rd of April, 1882, is made a part hereof for greater certainty.

Wherefore complainant moves your honors for a rule on the defendants to show cause, on Monday next, why the prayer of the aforesaid rule should not be granted.

(Sig'd) MOTT, KELLY AND SAUNDERS,
BOATNER & LIDDELL, *Solicitors.*

51 Entry in Chancery Order Book.

MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

MONROE, *June 26th*, 1882.

Complainant filed her application for rule on defendants to show cause, on Monday next, why the orders, motions, & decrees prayed for by complainant's solicitors on 3d of April, 1882, should not be granted as prayed for.

Order. Rule to Show Cause.

Extract from the Minutes, June 27th, A. D. 1882.

MONROE, *Tuesday, June 27th*, '82.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, presiding judge.

Rule to show cause filed by pl't'ff, and ordered that defendants show cause as prayed for on to-morrow, June 28th, 1882, at 9 o'clock.

52 *Answer to Rule to Show Cause. Filed June 28th, '82.*

In the Circuit Court of the United States for the Western District of Louisiana.

MARY E. R. BOYD
vs.
WM. G. WYLY and CHAS. R. EGELLY. } No. 1.

The defendants, in answer to the rule to show cause granted on the 26th of June and made returnable on the 27th of June in this case, says:

1st. That there was no decree *pro confesso* made in the case. The application for taking the bill *pro confesso* was granted by the clerk.

2nd. By rule 32 the defendants may, after the bill has been taken for confessed, with the leave of the court, demur or plead to the whole bill or to part of it, or he may demur to part, plead to part, and answer as to the residue. The permission of the court was granted to file the pleas, etc. No notice to the plaintiff of this application was necessary under the rules, nor was it necessary that the order *pro confesso* should be set aside in order to enable defendants
53 to file their pleas, etc.; only the permission of the court was necessary; and, although the order *pro confesso* was set aside in express terms, it was not essential in order to authorize the judge to grant leave to file the pleas, and no special notice was given the plaintiff of the application for the reason that the district judge was absent from his residence and the circuit judge was absent from the State, and the defendants were anxious to speed the trial as much as possible, and sent duplicates of the application to both judges by mail to the places where they were informed they might be, and no possible injury could result to plaintiff from want of notice of defendants' application, if any such notice was required by the rules, and both the district and circuit judges granted leave to file the pleas, etc., as will appear from the orders made in chambers by said judges on the applications of defendants hereto annexed and made part hereof.

3d. Defendants maintain that the order dismissing the bill entered in the order book was properly granted under rule 38. The pleas, etc., had been filed with leave of the court, and plaintiff
54 should have replied to said pleas and answer or had them set down for argument. No notice is required by the rules of filing pleas, demurrers, or answers.

They further answer that under the rules of the court, after leave of the court, any pleas or demurrer may be filed after default or order *pro confesso* taken, and if the order of the judge was not entered in the order book, and if it was required to be so entered, it was the fault of the clerk, whose duty it is to make such entries.

They further show that plaintiff knew of said order at least as early as the 3rd of April, 1882, but that she has taken no steps to speed the trial of this cause by replying to said pleas and answer or to have them set down for trial.

4th. Defendants further say that the order *pro confesso* should not be reinstated for the reasons above stated, and that no decree thereon should be granted, as to do so under the circumstances would be unjust and inequitable.

They further say that if any want of regularity exists in making the order setting aside the order *pro confesso*, then they ask that the order be now set aside and leave be granted to file *his*
55 plea or answer aforesaid. They further say the bill of complaint should not be reinstated because the order dismissing it was regularly granted under the rules of the court. The defendants have complied with the conditions imposed by the circuit judge by paying costs and filing pleas and answer before the next rule day in February, 1882.

(Sig'd) JNO. J. LUDELING,
Solicitor for D'f'ts.

Circuit Court of the United States, Western District of Louisiana.

CLERK'S OFFICE.

One of the defendants, Wm. G. Wyly, being duly sworn, makes oath that the facts and allegations in the foregoing answer to the rule to show cause are true and correct to the best of his knowledge and belief.

(Sig'ed) W. G. WYLY.

Sworn to and subscribed before me this 28th day of June, 1882.
(Sig'ed) JULIUS ENNEMOSER, *D'y Clerk.*

56 *Motion to Set Aside Rule Pro Confesso and for Leave to File Pleas, etc. Filed June 28th,* 1882.

Circuit Court of the United States in and for the Western District of Louisiana.

MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

The defendants in the above-entitled suit respectfully move that the order *pro confesso* taken on the 5th of December last, when the court was not in session, and granted by the clerk, may be set aside, and that respondents may be allowed to file such pleas and answers as justice and equity may require.

They aver that the subpœnas were served on the 13th of September on Egelly, and at the domicil of W. G. Wyly on the 16th of September last; that Jno. T. Ludeling was requested by letter to make appearance for defendants, which he did on the first return day after service of subpœnas, but having no knowledge of the facts of the case he could not prepare an answer; that W. G. Wyly, the real defendant in this suit, was prevented by sickness from attend-

ing to the business till after the rule *pro confesso* had been
57 taken, and that he has recently had consultations with his solicitor, John T. Ludeling, and prepared the pleas, which defendants are now ready to file, and the- ask leave of the court to file the same without unnecessary delay, and the- pray for all necessary orders and general relief.

(Sig'd) JNO. T. LUDELING,
Solicitor for Defendants.

Circuit Court of the United States, Eastern Dist. of La.

CLERK'S OFFICE.

W. G. Wyly, one of the defendants in the above-entitled cause, makes oath that the facts and allegations in the foregoing petition or motion are true & correct.

(Sig'd) W. G. WYLY.

Sworn to & subscribed before me this 16th day of January, 1882.

(Sig'd) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, Eastern Dist. of La.

UNITED STATES OF AMERICA, *State of Louisiana:*

Circuit Court in & for the Western District of Louisiana.

The foregoing application being considered, it is hereby ordered that the order *pro confesso* taken on 5th Dec., 1882, be set aside and annulled; and it is further ordered that defendants be permitted to file such pleas & answers as they might or could have made before said order *pro confesso* had been taken, the answer in this case to be filed on or before the 1st Monday of the term, at Monroe, of April term.

Thus done and signed at Alexandria, La., Jan'y 27th, A. D. 1882.

(Sig'd) ALECK BOARMAN,
Judge Western District of La.

Extract from Minutes, June 28th, 1882.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, judge, pres'd.

MARY E. R. BOYD
vs.
W. G. WYLY *et als.* } No. 1.

Answer to rule filed.

58 *Replication. Filed June 29th*, 1882.

In the Circuit Court of the United States for the Western District of Louisiana, Sitting at Monroe.

MARY E. R. BOYD, by Her Next Friend, etc., *vs.* WM. G. WYLY *et al.* } No. 1.

The replication of the complainant, Mary E. R. Boyd, by her next friend, James R. Boyd, to the pleas and answer in support thereof of Wm. G. Wyly and Charles R. Egelly, defendants.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said pleas and answer, for replication thereunto, saith that she will aver and prove her said bill to be certain, true, and sufficient in the law to be answered unto, and that the said pleas and answer of the said defendants are uncertain, untrue, and insufficient in the law to be answered unto by this repliant, without this, that any other matter or thing whatsoever in the said pleas and answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things
59 this repliant is and will be ready to aver and prove as this honorable court shall direct, and she prays as in and by her said bill she has already prayed.

(Sig'd) MOTT, KELLY AND SAUNDERS,
Complainant's Solicitors.

Extract from the Minutes, Thursday, June 29th, 1882.

Court opened pursuant to adjournment.
Present: Hon. Aleck Boarman, judge, presiding.

MARY E. R. BOYD *vs.* WM. G. WYLY *et al.* } No. 1.

In this cause the rule to show cause herein taken by complainant on the 26th of June, 1882, ordered be discharged and the order at rules of 7th of March, 1882, dismissing the bill vacated and the bill reinstated; further ordered that the pleas and exceptions filed 1st Feb'y, 1882, be set for argument instanter, and argument heard and pleas held to be sufficient.

60 Extract from Chancery Order Book, June 29th, 1882.

MARY E. R. BOYD *vs.* WM. G. WYLY *et al.* } No. 1.

The order dismissing the bill having been this day vacated, the complainant, by her solicitors, Mott, Kelly & Saunders, now sets down for argument the pleas of the defendants herein filed on the first of February, 1882.

Extract from the Minutes, Friday, June 30th, 1882.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, judge, presiding.

MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

Replication permitted to be filed.

61 *Motion for Appointment of Special Examiner to Take Testimony in East Carroll.*

Extract from the Minutes, June 30th, 1882.

MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

On motion of Mott, Kelly and Saunders and of Boatner & Liddell, solicitors for complainant, and on their suggesting that since the ruleing of the court upon the question of the sufficiency of the pleas herein filed complainant has filed her replication to said pleas and the answers in support thereof, and that the cause is now at issue, and upon their further suggesting that under equity rule 67 of the Supreme Court defendants have been notified that complainant desires the evidence in the cause to be taken orally, and on their further suggesting that many of the witnesses to be examined reside in the parish of East Carroll and that it is necessary to appoint an examiner to take the testimony of such witnesses—

It is ordered that J. B. Beattie, stenographer of the court, be appointed special examiner to take testimony in this cause in said parish; that complainant have forty days from the date hereof
62 for her examination-in-chief, respondents thirty days next following for their examination-in-chief, and complainant have ten days thereafter for her examination in rebuttal.

Entry in Chancery Order Book, Friday, Sept. 29th, 1882.

MARY E. R. BOYD *et al.*
vs.
W. G. WYLY *et al.* } No. 1.

Amendment of bill filed.

Entry in Chancery Order Book, Friday, Sept. 29th, 1882.

MARY E. R. BOYD *et al.*
vs.
WM. G. WYLY *et al.* } No. 1.

Replication to answer of Wm. G. Wyly and Egelly filed.

63 *Replication to Answer of Egelly. Filed September 29th*, 1882.

In the Circuit Court of the United States for the Western District of Louisiana, Sitting at Monroe. In Equity.

MARY E. R. BOYD
vs.
WILLIAM G. WYLY *et al.* } No. 1.

Replication of Mary E. R. Boyd, by her next friend, James R. Boyd, complainant, to the answer of Charles R. Egelly, defendant.

This repliant, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto, saith that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* has already prayed.

MOTT, KELLY AND SAUNDERS,
Solicitors for Complainant.

64 *Replication to Answer of Wm. G. Wyly. Filed 29th September*, 1882.

In the Circuit Court of the United States for the Western District of La., Sitting at Monroe. In Equity.

MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
WM. G. WYLY *et al.* } No. 1.

Replication of Mary E. R. Boyd, by her next friend, James R. Boyd, complainant, to the answer of William G. Wyly, defendant.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that she will aver and prove her said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver

and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* hath already prayed.

65 & 66

MOTT, KELLY AND SAUNDERS,
Complainant's Solicitors.

Amendment of Bill. Filed 29th September, 1882.

In the Circuit Court of the United States for the Western District of Lousiana, Sitting at Monroe. In Equity.

MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
WILLIAM G. WYLY and CHARLES R. EGELLY. } No. 1.

To the judges of the circuit court of the United States for the western district of Louisiana :

The petition of Mary E. R. Boyd, by her next friend and son, James A. Boyd, showeth—

That your petitioner having exhibited her bill in this honorable court against the said defendants, William G. Wyly and Charles R. Egelly, they have appeared and put in their several answers thereto, and your petitioner is advised to amend her said bill by making her husband, Frederick W. Boyd, of Waukesha, in the State of Wisconsin, a party defendant thereto in the character and capacity of dative testamentary executor of the last will of James Railey, late of Adams county, State of Mississippi, deceased, as follows :

67

1st. By inserting in said bill, at the beginning thereof, after the words "brings this her bill against William G. Wyly and Charles R. Egelly, both of the parish of East Carroll, in the State of Louisiana, and citizens of said State," the words "and Frederick W. Boyd, of Waukesha, in the State of Wisconsin, and a citizen of said State, as dative testamentary executor of the last will of James Railey, late of the county of Adams and State of Mississippi, deceased."

And by inserting in the prayer for process, at the end of said bill, after the words "writs of subpœna to be addressed to the said William G. Wyly and the said Charles R. Egelly" and before the words "hereby commanding them," the words "Frederick W. Boyd, as dative testamentary executor of *the* James Railey, late of Adams county, State of Mississippi, deceased."

And your petitioner is further advised to amend her said bill by inserting therein, immediately before the prayer for process, at the end of the said bill, the following words:

"And your oratrix further avers that her brother, H. Otey Railey, in the said will of the said James Railey mentioned, has disclaimed and disclaims in favor of your oratrix any and all claim to the property hereinbefore described and sought to be recovered by

68 your oratrix in this suit and the rents and revenues thereof, and thus, by reason of said disclaimer, it is not necessary that the said H. Otey Railey should be made a party to this suit."

Your petitioner therefore prays that she have leave to amend her said bill in the particulars above set forth requiring no further answer to said bill from the said William G. Wyly and Charles R. Egelly.

(Signed) MOTT, KELLY AND SAUNDERS,
Complainant's Solicitors.

It is agreed that this amendment to the bill be filed without any further order of the court, and that the matters therein contained are at issue upon a general and specific denial by the defendants without further answer on their part.

(Signed) J. R. BECKWITH, *Sol. for Def'ts.*
(Signed) MOTT, KELLY AND SAUNDERS,
Solic-tors for Complainant.

Seperate Answer of Wm. G. Wyly. Filed October 2nd, 1882.

Circuit Court of the United States for the Western District of Louisiana. In Equity.

MARY E. R. BOYD, &c., *vs.* WM. G. WYLY *et al.* } No. 1.

69 The seperate answer of Wm. G. Wyly, defendant, to the bill of complaint of Mary E. R. Boyd, by her next friend, James R. Boyd.

This defendant, now and all times hereafter, saving and reserving unto himself all and all manner of benefit and advantage of exception. causes of demurrer, and all and all manner of pleas and exceptions which can have or may be pleaded, had, or taken to the manifold errors, uncertainties, insufficiencies, and imperfections in complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as he is advised it is necessary or material for him to make answer unto, answering, saith—

That he is informed and believes that it is true that the complainant, Mary E. R. Boyd, is the wife of the said Frederick W. Boyd named in said bill; that at the time when said bill was filed herein and that all times since that time the said husband, Frederick W. Boyd, has been the husband of said complainant, who has been and still is under coverture; that this defendant is advised of counsel that the said Mary E. R. Boyd is for that reason incompetent to bring this bill of complaint without her said husband, the said Frederick W. Boyd, joined as a party complainant therein, and that the said defect in that behalf and respect, as well as the said incompetency of the said Mary E. R. Boyd to bring said bill of
70 complaint in manner and form as the same is brought, is manifest and fully made to appear upon the face of the said

bill of complaint. Wherefore said defendant insists upon all advantage growing out of said nullity and defect in that behalf the same in all respects as if said defendant had formally demurred to said bill for that reason and insufficiency, and insists that said bill of complaint should be dismissed with costs, and so prays your honors.

And, further answering, said defendant saith that he is advised that the said James R. Boyd, who is joined in said bill, is the son of the said Mary E. R. Boyd, but whether he is of the age of twenty-one years or competent to sue and act as the next friend of the said Mary E. R. Boyd this defendant hath no knowledge or information; wherefore he denies that the said James R. Boyd is a major or competent to stand and act as the next friend of the said Mary E. R. Boyd in her said bill or under any circumstances in any action or proceeding in equity.

And, further answering, said defendant saith that it appears in and by said bill of complaint that the said Frederick W. Boyd was at one time the dative testamentary executor of the last will and testament of the said James Railey, deceased, and qualified as such executor and became vested with all the title and interest in the property described in said bill of complaint, which by the law
71 of the State of Louisiana attaches to such executorship, and that said complainant in her said bill of complaint claims and avers that he was never legally divested of any of his title, interest, and control in and over said property vested in him as executor as aforesaid, and pretends that all of the action of the probate court referred to in said bill whereby it was sought to divest him of all title and authority as such executor is as in said bill alleged to have been and to be void and of no effect, and the appointment of Charles R. Egelly for that reason is in said bill denounced as a nullity for alleged want of notice and other pretended faults and defects. And said defendant saith in this behalf, while nowise admitting the truth of any or all of said pretenses of said complainant above set forth to be true, yet it appears from said complainant's own showing that her said husband, the said Frederick W. Boyd, is a material, indispensable party to said bill, and that said bill of complaint is defective for the want of said Frederick W. Boyd as a party thereto, and said defendants insists upon said defense the same in all respects as if he had demurred to said bill of complaint for that reason and defect apparent upon the face thereof, and also suggested to your honors that the said Frederick W. Boyd is a material and indispensable party to said bill by complainant's own showing, and that
72 said bill of complaint in its present form is defective for want of proper parties, for that reason, and that no valid decree can be rendered herein as said bill is exhibited.

And, further answering, said defendant saith that he is advised by the records of the probate court of the parish of Carroll, as the said parish then existed, that the said James Railey departed this life at or about the time stated in said bill of complaint, and that it appears from the record of the probate thereof that prior to his death he executed and made his last will and testament in the form as dis-

closed in the probate record thereof, a copy (of which) whereof is annexed to this answer and made a part hereof, marked "A."

And, further answering, said defendant saith that it is true that at the time of his death the said James Railey was the owner of the plantation referred to in said bill of complaint as the "Raleigh plantation," but whether the description thereof as set forth in said bill is true and correct as to boundaries and area said defendant is not advised, and therefore does not admit the said description to be correct, but insists upon strict proof, if the same becomes material and important.

And, further answering, said defendant saith that he is in-
73 formed and believes that the said James G. Carson accepted the trust conferred upon him and became the executor of the said will of the said James Railey, but that before he could take any material or important steps in carrying out the conditions of said will or in any material way deal with said succession he died and said succession became vacant for want of a representative until the said Frederick W. Boyd was, in or about the month of July, 1866, after the late war terminated, appointed by the probate court dative testamentary executor, as alleged in said bill of complaint.

That said defendant is advised and informed that the said Frederick W. Boyd was in all things unfaithful to said trust; that he took possession of the property of said succession situated in the State of Louisiana and used the same for his private benefit; that he made no attempt to pay any of the creditors of the said deceased or of said succession; that he is informed that he involved said succession in large debts growing out of his administration of said estate; that he neglected to make or file any account of his trusteeship to the probate court and involved the affairs of said succession in all manner of confusion, and finally escaped from his office and from the coercive power and reach of the probate court by permanently abandoning the State and becoming a citizen
74 of another State, beyond the reach of the *reach of the* primitive power and the reach of the probate court vested with jurisdiction over said property belonging to said succession; that he had so abandoned his trust long prior to *to* July, 1868; that the course of said Frederick W. Boyd was such that said succession was again left vacant for want of any representative; the said Frederick W. Boyd, although beyond the jurisdiction of *of* the probate court, had still the physical power to complicate matters and damage the just creditors of said succession when the said probate court, having full jurisdiction in the premises *with* and competent authority in the premises, adjudged said succession to be unrepresented, and, as it had lawful right to do and in justice was compelled to do, appointed an administrator of said succession, selecting the said Charles R. Egelly, who duly qualified and proceeded to administer upon said succession; that the said Frederick W. Boyd has never returned to this State, and is now a citizen of the State of Wisconsin; has never made or filed any account of his executorship, nor has he come within the jurisdiction of said probate court so that he could be compelled to come to an account of his trust, and as this defendant is informed

is, and upon a just accounting would be, found largely in-
75 debted to said succession; that though well aware *that though well aware* of the action of said probate court in destituting him and terminating his said trust the said Frederick W. Boyd has never attempted to have said action of said court annulled or avoided by appeal or otherwise, but the same stands as the judgment of the said probate court, unreversed and in full force and effect.

And, further answering, said defendant saith that the statement in said bill of complaint that said defendant, in the month of July, 1868, or at any other time, combined or conspired or entered into any plan or agreement with his codefendant, Charles R. Egelly or with the said Sparrow or with the said Montgomery named in said bill of complaint or with any other person or persons whatsoever to wrong, injure, or defraud the said complainant or any other person, either under the forms of law or otherwise, out of any right or property of any kind, or to transfer the apparent title to the "Raleigh plantation" or any other property to this defendant, is absolutely and unqualifiedly false and untrue; that it is false and untrue that he had any part, hand in, or knowledge of any of the proceedings which led to the destitution of the said Boyd and the appointment of the said Egelly as administrator of said succession.

76 That prior to the date of the advertisement of the property for sale under order, the order of the probate court under which the same was sold on the 20th day of October, 1868, this defendant was in all things a total stranger to the proceedings in the probate court had in said succession of the said James Railey, and that he never saw the record, nor did he know what proceedings had been had or taken in said succession, nor did he ever see or know of the order for the sale of the property of said succession beyond the information conveyed in the newspaper advertisement of said sale prior to his purchase of the property at said sale; that he had no opportunity to examine said record prior to such sale, nor did he ever see the same or any part thereof until after said sale.

That all charges and statements in said bill contained wherein and whereby this defendant is charged with conspiracy and fraud are false and scandalous, as the said complainant well knows or could have learned upon the slightest inquiry.

And, further answering, said defendant saith that it is true that on or about the 20th day of October, 1868, this defendant became the purchaser in good faith of the "Raleigh plantation;" that he purchased the same at a public probate sale of said property
77 duly advertised; that he obtained his knowledge that said property was for sale by the public advertisement of said sale, and from no other source; that he was a bidder at said sale in competition with others, and said property was adjudicated to him at said action sale as the highest bidder; that he paid the full sum bid for said property to said succession, and the same was administered upon in said probate court and distributed by said court, with which said proceedings this defendant was in no manner interested, and that his only means of information on the subject is the record of said probate court; that he was not a creditor of said succession nor

an heir or legatee of the said James Railey, and in no manner meddled with the manner in which said probate court disposed of said money so by him paid to said succession.

That it is true that said sale was approved and a due and legal act of conveyance for said property was bid in by this defendant, executed in due form, and recorded in the proper office of record in said parish in or during the month of October, 1868, where the same has been at all times since that date and is still of record.

78 And, further answering, said defendant saith that as to so much of said bill as avers that "the vileness of the price for which the said plantation was adjudicated is a flagrant badge of the unreal and fraudulent character of the transaction" is a scandalous, bad pleading and false and untrue; that said sale was an open, free, and public sale, open to competition by all persons desiring said property, and that the price paid for said land was fully equal to the price for which like lands were at that time selling in that locality, as said complainant well knew.

That it is not true, but, on the other hand, unqualifiedly false, that, as averred in said bill, this defendant purchased said land in bad faith and in fraud through or by any fraudulent combination or conspiracy with any person whatsoever.

That it is true that up to the moment of his purchase of said property and at the time of said purchase this defendant knew nothing of the proceedings had in said succession of James Railey nor who had represented said succession prior to the appointment of the said Egelly, nor had he any knowledge of the proceedings which led to the said order of sale, except such as were disclosed in and by the public notice of said sale published

79 by order of the probate court, nor had he any knowledge of the existence or terms of the alleged last will of James Railey.

And, further answering, said defendant saith that it is true, as stated in said bill of complaint, that a short time after this defendant had purchased said property as aforesaid, and after he had become acquainted with the record in said succession proceedings, and after he was informed of the character thereof by inspection thereof, he did sue out in the proper court having jurisdiction thereof regular proceedings of monition, calling on all parties disputing his title to said property, if any there were, to make their claims and objections known to the court and have the same adjudged upon in due form of law; that there was due service upon all parties and due publication had as required by the statutes of the State of Louisiana in such cases made and provided and in full force and effect, and that after such due notice and the due delays and proceedings had there was a due, regular, and formal judgment and decree of said court homologating his said title and declaring the same good and and solid; that said judgment was never appealed from or in any manner disturbed, annulled, or avoided, but is in full force

80 and *and* effect and has been at all times since the rendition thereof; that this defendant has at all times claimed all of the

results which by law should and do flow from said action and judgment under and by virtue of the laws of Louisiana, and avers that there are and have been no acts of fraud or spoliation in or about the purchase of said property.

And, further answering, said defendant saith that the averment in said bill that this defendant was a purchaser in bad faith (of said property) is false and untrue, and that it is not true that this defendant is either in law or equity to be taken and held as having acquired said property in said Raleigh plantation in trust for the said Mary E. R. Boyd or any other person, nor is he responsible to any person for the rents and revenues or profits of said plantation, and that any such pretense is a sham and a fraud; that at the time of the death of said James Railey he was largely in debt; that large debts due by said succession accumulated during the unfaithful administration thereof by the said Frederick W. Boyd before he fled the State, which have never been paid or discharged; that this defendant is advised, informed, and believes that none of the
81 special legacies named in said will have been paid and discharged, and that at the time when said probate court ordered the sale of said "Raleigh plantation" the said succession was insolvent; that the said Mary E. R. Boyd has never accepted said succession without the benefit of inventory, nor has any bond to secure legatees or creditors been made or given by her, nor has there ever been any order or judgment of any probate court recognizing her as an heir or legatee of the said James Railey or putting her in possession of said Raleigh plantation or any property of said succession, nor has she ever had seizin of any of said property or any right to the possession thereof, as she well knows.

And, further, that said succession and all controversies therein are still open, pending, and unsettled in the probate court of the parish of East Carroll, which said court has exclusive probate jurisdiction over said succession and all matters and controversies therein.

And, further answering, said defendant saith that the said complainant has never in any manner made any tender to this defendant of the price by this defendant paid for said property, as averred in her bill, nor in any manner offered to return the same to this defendant.

And, further answering, said defendant saith that it appears from the face of said complainant's bill of *bill of* complaint as the
82 same is exhibited herein; that the said complainant ne[illegible] had any right or title to the possession of said propert[illegible] that — are no matters set forth and contained in her said [illegible] of which a court of equity can take cognizance or grant or allow to said complainant any relief, and said defendant insists upon the said defense the same in all respects as if he had formally demurred to said bill of complaint in that particular & behalf.

And, further answering, said defendant saith that it appears by the complainant's own showing and by the last will of the said James Railey, as probated in said probate court, made a part of said bill, that Belle Railey, Cornelia Railey, H. O. Railey, C. Randolph Railey are eithers heirs or particular and special legatees of the said

James Railey and have material interests and rights in said succession after the creditors are satisfied, and that they or their *or their* heirs or legal representatives, in the event of the death of any thereof, should be parties to this action, and that no valid decree can be made herein until said above-named parties are made parties hereto, and this defendant suggests that said bill of complaint is defective for the want of said above-named persons as parties hereto, and insists upon the same.

82½ And, further, that before any relief of any kind can be granted it is material, important, and indispensable that the said succession of James Railey as now open and unsettled in the probate court of East Carroll Parish be made also a party hereto through a proper representative thereof.

83 And, further answering in this behalf, said defendant saith that he acquired said property in good faith in the year 1868 by a just title, legal and sufficient to transfer said property, and has in good faith held undisputed possession of the same since October, 1868, believing himself to be the true *bona fide* owner thereof in full title. Wherefore said defendant pleads a *a* further defense herein, that the said complainants' action, even if it was sufficient in equity, is prescribed against by the lapse of five years since said alleged right of action arose, and by the lapse of ten years since said alleged and supposed wrongs and his purchase and possession of said property under and by virtue of the provisions of the statutes of the State of Louisiana, in full force and effect at all times since the year 1867 and before that time.

And said defendant having purchased said property at a public sale made by a person authorized to sell at public auction, this defendant, as and against all supposed and alleged informalities connected with or growing out of said public sale, pleads prescription of five years, as provided in art. 3542 of civil code of Louisiana and other statutes of said State relating thereto.

84 And, further answering, said defendant saith that it is not true that the said Charles R. Egelly, in making said sale and act of conveyance, acted as administrator *de son tort* — that it is true that he acted under and by authority of the probate court having jurisdiction of the said matters of said succession, and that his acts, as such officer of said court, were all approved and homologated by said court by its solemn judgment in that behalf.

And, further answering, said defendant saith that while he had nothing whatsoever to do with said appraisement and inventory of the property of said succession complained of in said bill, and had no knowledge thereof *thereof* until long after the same was made and until the day of the sale of said property at public auction, the said appraisement and inventory was made by the direction of said probate court, and was by said court by its solemn judgment ratified, approved, and homologated, which said judgment is unreversed and still stands in full force and effect, and is *res judicata*, and in all things is just, true, and correct.

And, further answering, said defendant saith that he denies all and singular all general and special charges and allegations of fraud,

combinations and conspiracy, in said bill contained, and saith
85 that the same are in all respects false and untrue; that this defendant had no knowledge whatsoever of any proceedings had or taken to effect the sale of the Raleigh plantation prior to the advertisement thereof for sale in the public newspaper; that to the very best of this defendant's knowledge, information, and belief said sale and all the steps taken to effect the same were honest and in strict compliance with law and justice.

And, further answering, said defendant saith that as to the statement in said bill of complaint that all of the money paid by this defendant for and as the price of said property, with the exception of administration commissions and charges, was paid to Sparrow and Montgomery, this defendant had no control, either over said money after he had paid the same over to the court, nor had he the right to dictate to the court what manner of disposition should be made of the same, nor did he in any manner have anything to do with or take any part therein; that he knows nothing of what disposition was made of said money, except that such as he obtained from an inspection of the record of said probate court made nearly fourteen years after the said judgment of distribution had become final and irreversible, and this defendant respectfully submits that it would have indicated a greater evidence of intention to deal fairly
86 with your honors had the said complainant informed the court in her said bill that by the record of the said probate court in said — consulted by said complainant it also appears that the said Sparrow and Montgomery were the judgment creditors of the said succession by judgment of the date of the 6th of April, 1867, on the account of the executor of said last will and testament of the said James Railey, rendered contradictorily not only with the husband of the said complainant, at that time dative executor of said succession, as well as with all heirs and creditors of said succession

And this defendant again denies all and all manner of frauds, combination, and confederacy wherewith he is by said bill charged, without this, that there is any other matters, cause, or thing in said complainant's bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be herein dismissed with his reasonable
87 costs and charges in this behalf most wrongfully sustained.

(Signed) W. G. WYLY.

J. R. BECKWITH,
Sol. and Counsel for said Defendant.

WESTERN DISTRICT OF LOUISIANA:

Wm. G. Wyly, being duly sworn, deposeth and saith that he is the defendant named in the foregoing answer by him subscribed; that he knows the contents thereof, and that the allegations therein

are true of his own knowledge, except such matters as are therein set forth upon information and belief, and that as to all such matters he verily believes the same to be true as therein set forth.

(Signed) W. G. WYLY.

Sworn to and subscribed before me this 27th day of September, A. D. 1882.

(Signed) E. J. DELONY,
Judge 8th Judicial District.

Copy of the Will of James Railey, Deceased, Referred to in the Foregoing Answer of W. G. Wyly, and Marked "A."

"*Ne varietur.*"
Parish of Carroll, La., Nov. 30th, 1860.
JNO. L. CHEATHAM, *Clerk.*

STATE OF MISSISSIPPI, *Adams County:*

OAKLAND, *February 1st*, 1860.

I, James Railey, of the county *of* and State before men-
88 tioned, being of sound mind and disposing memory, do make, publish, and declare this instrument of writing to be my last will and testament in the alographic form, and desire all courts having jurisdiction over wills in Mississippi, Louisiana, or Arkansas will not in any manner — with its full execution according to its letter, without any regard to forms of law or technicalities, to wit:

At my death I give to my wife, Matilda S. Railey, all the estate I may own, of every kind, in the State of Miss'i, and give all in fee simple, except my slaves, Auguste and Sarah, and their children, which said slaves and the future increase of Auguste and Sarah I give to my said wife during her natural life, and then the slaves and their future increase I give to my brother, Logan Railey, of Ky., knowing he will treat them with kindness and give them all the comforts they require and all the lenity from hard work they may merit.

It is my will that all my property in Louisiana and Arkansas be kept together as I may leave it until all my just debts are paid, and desire that my friend, James G. Carson, of Carroll parish, take the two plantations, Raleigh and Carondelet, under his management, and that my friend, James Carson, Jr., of Natchez, take my "Deer-
89 field" plantation in Ark. under his supervision until my debts are paid and (clerk's paragraph—"*ne varietur*," parish of Carroll, La., Nov. 3rd, 1860—Jno. L. Cheatham, clerk. "*Ne varietur*," parish of Carroll, La., Nov. 3rd, 1860—Jno. L. Cheatham, clerk) he, the said James Carson, is requested hereby to make a charge for his services, and his charge not be questioned, but paid out of the proceeds of the crop. After all my debts are paid, together with any legacies I may make, I wish my friend-, James G. and James Carson, Jr., to divide as equally as possible my Raleigh and Carondelet plantations, giving Raleigh to my daughter, Mary E. R. Boyd, with

all the negroes and stock, &c., and to my son, H. Otey Railey, Carondelet, with negroes, stock, &c., and should my grandson, Ernest H. Railey, survive to grow to the age of twenty-one years my friends above named, James G. Carson and James Carson, Jr., will give him possession of the Arkansas plantation called "Deerfield," but should my grandson not survive to the age of twenty-one years, then the Ark's place called "Deerfield" is to be sold in block or otherwise as may be thought best to the interest of my estate.

It is humiliating to me to say what course I wish taken in
90 regard to my son, Charlie Randolph Railey. I desire my friend, James G. Carson, to pay to Charlie the sum of one thousand dollars per annum in quarterly payments, and give as a justification on my part for so doing, and to give the courts a full evidence of the necessity of this course, the following statement:

Charlie was tried for murder and confessed the act, and nothing but the proof as was given by his school teacher and Dr. Metcalfe, my family (clerk's paraph—"*ne varietur*," Nov. 3rd, 1860—Jno. L. Cheatham, clerk. "*Ne varietur*," parish of Carroll, Nov. 3rd, 1860—Jno. L. Cheatham, clerk) physician, that Charlie had not mind enough to be responsible for his acts saved him from the penalties of the law.

Under this state of things I feel it my duty not to place property or funds (only for his support) in his possession. The annuity to be paid Charlie will be retained one-third from each Carondelet, Raleigh, and Deerfield, and should events occur to make amount annually greater my friend, James G. Carson, is hereby authorized to — all necessary in the matter

I forgive M. E. R. Boyd all the account- I have charged to her.

After all my just debts are paid I give to my niece, Belle Railey, and to my niece, Cornelia Railey, both daughters of Logan
91 Railey, of Ky., each the sum of five thousand dollars.

Signed the day and date above written, at Oakland.

J. RAILEY.

NOTE.—There are many slaves secured to Mrs. Railey by wills, deeds, &c, and some have intermarried with some of my own; Mrs. R. and myself have exchanged many, and she may continue to do so at pleasure, excepting Sharah and Auguste and children. See list of exchange on my old tax book, made out by E. Staunton and signed by Mrs. M. S. R. & J. R. in Mr. Stanton's presence.

Clerk's Paraph.

"*Ne varietur.*"
Parish of Carroll, L. Nov. 3rd, 1860.
JNO. L. CHEATHAM, *Clerk.*

"*Ne varietur.*"
Parish of Carroll, La., Nov. 3rd, 1860.
JNO. L. CHEATHAM, *Clerk.*

THE STATE OF MISSISSIPPI, } ss:
Adams County, }

In the Probate Court of said County, at the September Term, A. D. 1860.

In the matter of a certain instrument of writing purporting to be the last will and testament of James Railey, deceased.

Personally appeared in open court, at the above-stated term, F. Dryden Stockman, Audley C. Britton, and James N. Stockman, who, having first been duly sworn, severally deposed and said that they were well acquainted with the handwriting of James Railey, late of said county, deceased, having often seen him write and sign his name, and that the whole of the foregoing instrument
92 of writing, as well as the signature thereto, purporting to be the last will and testament of said James Railey, is in the proper handwriting of the said James Railey, and that on the 1st day of February, 1860, day of the date of said instrument, the said James Railey was twenty-one years and upwards of age and of sound and disposing mind.

F. D. STOCKMAN.
A. C. BRITTON.
JAMES N. STOCKMAN.

Sworn to and subscribed in open court September 26, 1860.
RICH'D A. INGE, *Clerk.*

A certain instrument of writing, purporting to be the last will and testament of James Railey, deceased, was brought into court, proven by the testimony of F. Dryden Stockmon, Audley C. Britton, and James N. Stockman to be wholly in the handwriting of said James Railey, and ordered to be recorded as his last will and testament.

Clerk's Paraph.

"*Ne varietur.*"
Parish of Carroll, La., Nov. 3rd, 1860.
JNO. L. CHEATHAM, *Clerk.*

"*Ne varietur.*"
Parish of Carroll, La., Nov. 3rd, 1860.
JNO. L. CHEATHAM, *Clerk.*

THE STATE OF MISSISSIPPI, } ss:
Adams County, }

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify that the foregoing four pages contain a true and perfect copy of the original last will and testament and the proof
93 thereof of James Railey, deceased, and the order of the court made thereupon as the same remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and seal of said court, at Natchez, the 19th day of October, A. D. 1860.

RICH'D A. INGE, *Clerk.*

THE STATE OF MISSISSIPPI, *Adams County,* } *ss:*

I, Reuben Bullock, judge of the probate court (sole and presiding) of said county and State, do hereby certify that Richard A. Inge, whose genuine signature appears to the foregoing certificate and attestation, is and was at the date thereof clerk of said court, duly elected, qualified, and commissioned; that his said certificate and attestation are in due form of law, and that all of his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout.

Given under my hand and seal this 19th day of Oct., A. D. 1860.
R. BULLOCK, *Judge.* [SEAL.]

"*Ne varietur.*"
Parish of Carroll, La., Nov. 3rd, 1860.
JOHN L. CHEATHAM, *Clerk.*

Mark and endorsements on the outside of said instrument of writing:
94 "R. Succession of James Railey. Will and probate. Filed Nov. 3rd, 1860. John L. Cheatham, clerk."

STATE OF LOUISIANA, *Parish of East Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the foregoing six pages contain a true and correct copy of the documents on file and of record in this office, to wit, the copy of the last will and testament of James Railey, deceased, the proof thereof and order of court thereupon.

In testimony whereof I have hereunto set my hand and the seal of said court this 5th day of September, A. D. 1882.
[SEAL.] (Signed) F. H. G. TAYLOR,
Deputy Clerk.

Endorsed: Succession of James Railey. Copy of will and probate.

Extract from the Minutes, Thursday, Oct. 5th, 1882. October Term, 1882.

Court met pursuant to adjournment.
Present: Honl. Don A. Pardee, circuit judge.

MARY E. R. BOYD *et al.*
vs.
WM. G. WYLY *et al.* } No. 1.

Interrogatories of def't filed.

95 Extract from the Minutes.

MONROE, LA., *Thursday, October 5th*, 1882.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

MARY E. R. BOYD *et al.*
vs.
W. G. WYLY *et al.* } No. 1.

Motion — order for the appointment of W. H. Hedrick, clerk of the district court of West Carroll, as special commissioner to take testimony of witnesses residing in West Carroll filed and order granted.

Notice of Defendant to Plaintiff.

Extract from the Minutes.

MONROE, LA., *Thursday, Oct. 5th*, 1882.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

MARY E. R. BOYD *et al.*
vs.
W. G. WYLY *et al.* } No. 1.

Notice of defendant to plaintiff of filing interrogatories filed.

Notice to Complainant. Filed October 5th, 1882.

U. S. Circuit Court, Western District of La.

MARY E. R. BOYD *et al.*, etc.,
vs.
W. G. WYLY *et al.* } No. 1.

96 To Mary E. R. Boyd, by her next friend, etc.:

Take notice that interrogatories to Thomas D. McCandless, James W. Draughan, Robert J. Landon, and R. S. A. McIntyre, of West Carroll, La., have been filed in the office of the clerk of said court under rule 67 and that a motion to have a special commissioner appointed to take the testimony of said witnesses by commission will be made in open court on the 5th day of Oct., 1882.

(Signed) JOHN T. LUDELING,
Solicitor for Def't.

Motion and Order. Filed October 5th, 1882.

Circuit Court U. S., Western District of La., Sitting at Monroe.

MARY E. R. BOYD, etc.,
vs.
WM. G. WYLY *et al.* } No. 1.

On motion of John T. Ludeling, solicitor for defendant, W. G. Wyly, and on his suggesting that the testimony of Thomas D. Mc-

Candless, James W. Draughan, Robert J. London, and R. S. A. McIntyre, of West Carroll parish, Louisiana, are material and competent witnesses in his behalf, and that since the taking of testi-
97 mony by the examiner appointed at the last term of this court the bill has been amended and an answer and replication thereto has been filed, it is ordered that W. A. Hedrick, clerk of the district court of the parish of West Carroll, La., be appointed special commissioner to execute the commission to take the testimony of said witnesses on interrogatories filed in this case under rule 67 of this court.

STATE OF LOUISIANA,
Parish of Ouachita, Western District of Louisiana

W. G. Wyly, the defendant in the above-entititled case, makes oath that the facts and allegations stated in the foregoing motion are true and correct.

—— ——.

Sworn to and subscribed before me this 5th day of Oct., 1882.
(Signed) J. B. BEATTIE, *D'y Clerk.*

Marshall's Return.

Received in office October 5th, 1882, and on the same day, month, and year made service on Charles Boatner a copy of the within.
(Signed) JAMES C. WEAKS,
U. S. Marshall.

98 *Interrogatories. Filed October 5th*, 1882.

Circuit Court of U. S. for Western District of La., Holding Session at Monroe.

MARY E. R. BOYD, by —— ——, etc.,
vs.
W. G. WYLY and CHAS. R. EGELLY. } No. 1.

Interrogatories to be propounded to Thomas D. McCandless, J. W. Draughan, Rob't J. London, and R. S. A. McIntyre, residing in the parish of West Carroll, La., material witnesses for the defendants.

To THOMAS D. MCCANDLESS:

1st. Where did you reside and what was your occupation during the year 1868?

2nd. Were you acquainted with the parties to this suit, and did you know the attorneys, Messrs. Sparrow and Montgomery?

3rd. Were you or not the recorder of the parish of Carroll during the year 1868; and, if so, where was the parish site as the parish was then constituted?

4th. Can you state who took the inventory of the succession of Jas. Railey in said parish of Carroll on or about the 4th day of September, 1868?

99 5. If you say you took it in your capacity of recorder, please state by what authority you took said inventory, and state who were the appraisers and who appointed them to appraise the property set out in said inventory.

6. If you say you made the inventory and appointed the said appraisers, state whether you swore them, and whether, as a matter of fact, they actually appraised the property and signed the oath and the appraisement, as purported in the original inventory hereto annexed, marked "A," and made part hereof.

7. Could the appraiser, Micheal Gingery, sign his name? And, if he could not, please explain fully how it is that on said inventory the name of said Gingery is written in a legible handwriting.

8. Were the appraisers who made the appraisment in question considered competent to make a fair and just appraisment, and were they or not disinterested and proper persons to appraise the plantation set out in said inventory?

9. Are you aware of any fraud or unfairness in making said inventory and appraisement? And, if so, state in what it consisted.

100 10. Was there anything peculiar or out of the usual course of duty in the act of making said inventory and appraisment?

11. Was W. G. Wyly, Charles R. Egelly, Sparrow, and Montgomery or either of them present at the making of said inventory; did they advise or in any manner take part in or exercise any influence in the matter of making said inventory?

12. Was there any combination, collusion, or fraud between the above-named parties or any other persons to influence you or the appraisers to make an unfair and unjust inventory and appraisment of the property?

13. Was or not the inventory and apprais-ment in question made *bona fide* in the honest and proper exercise of official duty by you and the said appraisers?

14. As recorder did it or not come to your knowledge that property was selling at forced sales at very low rates about that time?

15. Have you or not been present at many forced sales that occurred about that time, and have you or not observed the rates at which property was selling?

101 16. Was or not the land valued by the appraisers at about the usual rates at which such property in other cases had been appraised and sold at forced sale at about that time?

17. Was there or not a great scarcity of money in the country at that time and a great depression of property from this cause and from the failure of crops and other causes? And, if so, state fully the situation of things and what caused the low prices at forced sales of lands in Carroll parish.

To R. S. A. McIntyre:

1st. What is your age and occupation?

2. Where did you reside and what was your occupation in 1868?

3. Are you acquainted with the parties to this suit or either of them, and are you acquainted with the attorneys Sparrow & Montgomery?

4. Please examine the inventory annexed hereto, marked "A," and say whether you were one of the subscribing witnesses.

5. Were you present when the said inventory and appraisement was taken, on Sept. 4th, 1868?

102 6. Did you know the appraisers, Micheal Gingery and John W. Hayes, and had you known them long and well?

7. Were they sworn, and, in fact, did they make the appraisement as set out in said inventory?

8. Did they make a just and fair appraisement?

9. Are you aware of any fraud or malpractice by the recorder or said appraisers in making said inventory?

10. Are you aware of any collusion or fraud or undue influence practiced by any one to obtain said appraisement?

11. Did W. G. Wyly, C. R. Egelly, and Sparrow and Montgomery, or either of them, have any hand in taking said inventory, or did they appear at the taking thereof or use any influence or in any manner interfere with the recorder and the appraisers in making said inventory and appraisement?

12. Were the appraisers, Jno. W. Hayes and Micheal Gingery, considered as competent to make a fair and just appraisement of the plantation set out in said inventory? Were they impartial and proper persons to make the appraisement, and had they or not frequently acted as appraisers in other cases?

103 13. Was or not the price of property at forced sales very low about the time this inventory was taken?

14. Was or not money very scarce in the country, and had there or not been disastrous failures of crops and overflows in 1868 and 1867?

15. If you say the price of property was low will you explain the cause thereof and what was the financial and political condition of the country at the time?

16. Did you or not attend many auction sales or forced sales of property at Floyd about the time this inventory was made, and did you or not observe that the rates of land per acre were very low?

17. Did you or not regard the inventory annexed hereto as a fair and just one at the time it was made, and did you or not regard the appraisement as made at about the usual rate such property was estimated to be worth at auction or forced sale for cash?

18. Did or not the said Micheal Gingery sign said inventory or authorize the recorder to sign his name, or how was this?

19. Was or not Thomas D. McCandless considered an honest, capable, and faithful officer as recorder, and did he or not in this case make an honest and faithful appraisement of the property?

104 To ROBERT J. LONDON:

1. What is your age and occupation?
2. Where do you reside, and what was your occupation in 1868?
3. Who was the clerk of the district court in the parish of Carroll in 1868, and where is he?
4. Who was deputy clerk of said court at that time?
5. Were you or not deputy clerk at the time referred to and for several years thereafter?
6. If yea, please examine the inventory annexed hereto, marked R, and state whether you knew the recorder, Thomas D. McCandless, and also the appraisers and witnesses whose names are affixed to said inventory.
7. Was Thomas D. McCandless considered a faithful and competent officer while he was recorder of the parish of Carroll?
8. From your knowledge of the appraisers, did you regard them as fair and competent appraisers, and do you consider that they made a fair and just appraisement of the property according to its situation and the condition of the times?
9. Was the Raleigh plantation exposed to overflows when this inventory was made—in Sept., 1868? Were the levees down, and what was the condition of the plantation, as well as you remember?

105 10. Were you or not present at many sales that were made by the sheriff at the door of the court-house, and did you or not observe the price at which lands were selling at auction sale?

11. If yea, what was the rate per acre at which lands were selling under the hammer about this time?
12. Were not fine lands frequently selling at almost a nominal figure, and do you remember at about what price they were selling at cash sales?
13. What was the financial and political condition of the country in Oct., 1868, and what effect did it have on the cash sale on lands?
14. Was there or not great scarcity of money in the country at that time, and had there or not been great failures of crops and overflows in 1866 and 1867, and what effect did these causes produce on the price of lands?
15. Did it not come to your knowledge as deputy clerk that lands like this plantation were frequently at that time appraised and sold at as low a price per acre as the price fixed by the appraisers in making this inventory; and if you remember instances of the kind, please mention them?

106 16. If you say the price of lands was low at the time referred to, please give the reasons that operated to cause the great depression in the price of lands at that time?

17. Have you any remembrance of the circumstances attending the appointment of C. R. Egelly as administrator of succession of Jas. Railey and the destitution of Frederick W. Boyd as dative executor?
18. If yea, do you remember whether while you were deputy clerk any opposition was filed or made by said Boyd to the appointment of C. R. Egelly as administrator?

19. Please examine the document annexed hereto, marked "B," purporting to be an opposition by Boyd to the appointment of Egelly, and say whether you remember that it was filed among the papers of the succession of James Railey while you were in the office as deputy clerk; also state in whose handwriting the document is written, and whether or not the parties signing the same were the attorneys of Frederick W. Boyd, executor of James Railey?

20. Was or was not said document "B" filed pending the application of C. R. Egelly to be appointed administrator, and was
107 it or not regularly endorsed, marked, filed, and put among the mortuary papers, as was customary in like cases, and state fully anything you may remember about this matter.

21. When did you finally cease to act as deputy clerk, and under what clerk did you last serve as deputy?

22. Was or was not this document "B" among the mortuary papers when you left the clerk's office?

To the witness, J. W. DRAUGHAN:

1st. Where did you reside and what was your occupation in 1868?

2. Who was sheriff of the parish of Carroll in 1868, and who was chief deputy in charge of the affairs of the office?

3. If you say you were deputy in charge of the sheriff's office in 1868, please state whether or not you have made many sales of *sales of* lands, and whether or not you are familiar with the rates at which lands were selling at forced sales in 1868.

4. Do you remember whether there was much demand for lands, and at about what rates were they selling in 1868?

5. When the levees were down what was the usual price per acre at which plantations exposed to overflow were selling at forced sales for cash?

108 6. Were not lands selling very low under the hammer in 1868? And, if so, please state the causes that produced the great depression of value of lands.

7. Was or was not money very scarce in Oct., 1868, and had or not there been overflows and great failures of crops in the parish of Carroll?

8. What was the financial and political condition of the country about that time?

9. Were or not the people greatly discouraged at the financial and political outlook in 1868, and was there or not much uneasiness felt as to the future of the country?

10. Have you or not seen fine lands selling about that time for almost a nominal price per acre?

11. If you remember, please state about what price per acre you have seen fine plantations selling at forced sale for cash during the period enquired of, and give such instances as you may recollect.

12. It has been proven in this case that the Raleigh plantation was exposed to overflow by the levees being down in 1867 and 1868; what effect did this produce upon the value of that plantation and others similarly situated?

109 13. Were you or not present at the sale of that plantation to W. G. Wyly in Oct., 1868? And, if so, state whether or not it was an open, fair sale at public auction by the administrator, C. R. Egelly, and was or not the price given by him at about the usual rate at which similar sales had been made under the hammer, and if you remember the prices of other lands at forced sales about that time please give some instances.

To all the witnesses:

1. Do you know the parties to this suit or any of them, and how long have you known them?

2. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to *to* the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) JOHN T. LUDELING,
Solicitor for Def'ts.

110 *Order.*

Extract from the Minutes.

MONROE, LA., MONDAY, *Oct.* 16, 1882.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, judge.

MARY E. R. BOYD, etc.,
vs.
WM. G. WYLY *et al.* } No. 1.

Ordered that the time to — cross-interrogatories filed on October 5th, 1882, by defendant, be extended five days longer.

Motion and Order.

Extract from the Minutes.

MONROE, MONDAY, *October* 16, 1882.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, judge.

MARY E. R. BOYD
vs.
WM. G. WYLY & EGELLY. } No. 1. In Equity.

Now comes the complainant, and through her solicitors, Boatner and Liddell, respectfully moves the court to require the production and filing with the clerk of this honl. court the testimony and documents offered in evidence before J. B. Beattie, special commissioner appointed by this honl. court.

Order granted.

111 *Motion to Produce Testimony & Documents. Filed Oct. 16th, 1882.*

Circuit Court of the United States for the 5th Circuit. In Equity.

MARY R. BOYD *vs.* WYLY and EGELLY.

Now comes the complainant and through her solicitors, Boatner and Liddell, respectfully moves the court to require the production and filing with the clerk of this honl. court the testimony and documents offered in evidence before J. B. Beattel, special commissioner appointed by this honl. court.

(Signed) BOATNER & LIDDELL,
Solicitors for Complainant.

Extract from the Minutes.

MONROE, LA., TUESDAY, *October 17th*, 1882.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, judge.

MARY E. R. BOYD, by Her Next Friend,
vs.
WM. G. WYLY *et al.* } No. 1.

Frederick W. Boyd, as dative testamentary executor of the last will of James Railey, deceased, late of Adams county, has this day entered his appearance in writing to the amended bill of complainant in this cause.

112 *Appearance of F. W. Boyd, Dative Testamentary Executor of James Railey, Deceased. Filed October 17th, 1882.*

In the Circuit Court of the U. S. for the Western Dist. of Louisiana.
In Equity.

MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
WM. G. WYLY *et al.* } No. 1.

I hereby enter appearance as dative testamentary executor of the last will of James Railey, late of Adams county, Mississippi, deceased, to the amended bill of complainant of Mary E. R. Boyd, by her next friend, James R. Boyd, complainant.

(Signed) F. W. BOYD,
Dative Testamentary Ex'r of James Railey, Dec'd.

113 *Motion to Withdraw Record. Filed Nov. 29th*, 1882.

U. S. Circuit Court, Western District of La., Sitting at Monroe. In Equity.

MARY E. R. BOYD, by Her Next Friend, etc., *vs.* W. G. WYLY *et als.* } No. 1.

Before Hon. Don A. Pardee, circuit judge, at chambers.

On motion of Mott, Kelly and Saunders and C. J. Boatner, solicitors for complainant, it is ordered that they have leave to withdraw the record in this cause from the clerk's office.

(Signed) DON A. PARDEE, *Judge.*

Nov. 23rd, 1882.

I have no objection to the foregoing motion being granted.

(Signed) J. R. BECKWITH,
Sol'r for Def't Wyly.

Answers to Interrogatories. Filed December 21st, 1882.

Circuit Court of the United States of America for the Western District of Louisiana, Holding Session in the City of Monroe, La.

MARY E. R. BOYD *vs.* WM. G. WYLY *et al.* } No. 1.

114 Commission to W. A. Hedrick, Esq. clerk of the district court of the parish of West Carroll, La., to take the testimony of Thomas D. McCandless, R. S. A. McIntyre, J. W. Draughon, R. J. Loudon, of West Carroll parish, La.

To W. A. Hedrick, Esq., clerk of the district court of the parish of West Carroll, Louisiana:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Thos. D. McCandless, R. S. A. McIntyre, J. W. Draughon, R. J. Loudon, of West Carroll parish, La., and then duly examine, on the annexed interrogatories propounded by W. G. Wyly and Chas. R. Egelly, defendants, on oath touching and concerning certain matters and things in a case now pending in the said court wherein Mary E. R. Boyd, by her next friend, is pl'ff and Wm. G. Wyly and Charles R. Egelly, defendants, and the
115 same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court, without delay, on or before the first Monday in April, 1883, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, on this the 21st day of October, A. D. 1882, and of the Independence of the United States the one hundred and seventh.

[SEAL.] WM. RAY, *Dep. Clerk.*

Circuit Court of U. S. for Western District of Louisiana, Holding Sessions at Monroe, La.

MARY E. R. BOYD, by, etc.,
vs.
WM. G. WYLY and CHAS. R. EGELLY. } No. 1.

Interrogatories to be propounded to Thomas D. McCandless, J. W. Draughon, Robert J. Lowdon, and R. S. A. McIntyre, residing in parish of West Carroll, La., material witnesses for the defendants.

To THOMAS D. MCCANDLESS:

1st. Where did you reside and what was your occupation during the year 1868?

116 2nd. Where you acquainted with the parties to this suit, and did you know the attorneys, Messrs. Sparrow and Montgomery?

3rd. Were you or not the recorder of the parish of Carroll during the year 1868; and, if so, where was the parish site as the parish was then constituted?

4th. Can you state who took the inventory of the succession of James Railey in said parish of Carroll on or about the 4th day of September, 1868?

5th. If you say you took it in your capacity of recorder, please state by what authority you took said inventory, and state who were the appraisers and who appointed them to appraise the property set out in said inventory.

6th. If you say you made the inventory and appointed said appraisers, state whether, as a matter of fact, they actually appraised the property and signed the oath and the apprais-ment as purported in the original inventory annexed hereto, marked "A," and made part hereof.

7th. Could the appraiser, Micheal Gingery, sign his name? And, if he could not, please explain fully how it is that on said inventory the name of said Gingery is written in a legible handwriting.

8th. Were the appraisers who made the apprais-ment in question considered competent to make a fair and just apprais-ment,

117 and were they or not disinterested and proper persons to appraise the plantation set out in said inventory?

9th. Are you aware of any fraud or unfairness in making said inventory and apprais-ment? And, if so, state in what it consisted.

10th. Was there anything peculiar or out of the usual course of duty in the act of making said inventory and apprais-ment?

11th. Was W. G. Wyly, Chas. R. Egelly, Sparrow and Montgomery or either of them present at the making of said inventory?

Did they advise or in any manner take part in or exercise any influence in the matter of making said inventory?

12th. Was there any combination, collusion, or fraud between the above-named parties or any other persons to influence you or the appraisers to make an unfair and unjust inventory and apprais-ment?

13th. Was or not the inventory and apprais-ment in question made *bona fide* in the honest and proper exercise of official duty by you and the said appraisers?

14th. As recorder, did it or not come to your knowledge that property was selling at forced sales at very low rates about that time?

15th. Have you or not been present at many forced sales
118 that occurred about that time, and have you or not observed the rates at which property was selling?

16th. Was or not the land valued by the appraisers at about the usual rates at which such property in other cases had been appraised and sold at forced sale at about that time?

17th. Was there or not a great scarcity of money in the country at that time and a great depression of property from this cause and from failure of crops and other causes? And, if so, state fully the situation of things and what caused the low prices — forced sales of lands in Carroll parish.

To R. S. A. McINTYRE:

1st. What is your age and occupation?

2nd. Where did you reside, and what was your occupation in 1868?

3rd. Are you acquainted with the parties to this suit or either of them, and are you acquainted with the attorneys, Sparrow and Montgomery?

4th. Please examine the inventory annexed hereto marked "A", and say whether you were one of the subscribing witnesses.

5th. Were you present when the said inventory and apprais-ment was taken on Sept. 4th, 1868?

119 6th. Did you or not know the appraisers, Micheal Gingery and John W. Hays, and have you known them long and well?

7th. Were they sworn, and in fact did they make the appraisement as set out in said inventory?

8th. Did they make a just and fair appraisement?

10th. Are you aware of any collusion or fraud or undue influence practiced by any one to obtain said apprais-ment?

11th. Did W. G. Wyly, C. R. Egelly, and Sparrow and Montgomery, or either of them, have any hand in taking said inventory, or did they appear at the taking thereof or use any influence or in any manner interfere with the recorder and appraisers in making said inventory and apprais-ment?

12th. Were the appraisers, John W. Hayes and Micheal Gingery, considered as competent to make a fair and just apprais-ment of the plantation set out in the inventory; were they impartial and proper

persons to make the apprais-ment, and had they or not frequently acted as appraisers in other cases?

13th. Was or not the price of property at forced sales very low about the time this inventory was taken?

120 14th. Was or not money very scarce in the country, and had there not been disasterous failures of crops and overflows in 1868 and 1867?

15th. If you say the price of property was low, will you explain the cause thereof and what was the financial and political condition of the country at the time?

16th. Did you or not attend many auction or forced sales of property at Floyd about the time this inventory was made, and did you or not observe that the rates of land per acre were very low?

17th. Did you or not regard the inventory annexed hereto as a fair and just one at the time it was made, and did you or not regard the apprais-ment as made at about the usual rate such property was estimated to be worth at auction or forced sale for cash?

18th. Did or did not the said Micheal Gingery sign said inventory or authorize the recorder to sign his name, or how was this?

19th. Was or not Thomas D. McCandless considered an honest and capable and faithful officer as recorder, and did he or not in this case make an honest and faithful apprais-ment of the property?

121 To ROBERT J. LOUDON:

1st. What is your age and occupation?

2nd. Where did you reside in 1868, and what was your occupation in 1868?

3rd. Who was the clerk of the district court in the parish of Carroll in 1868, and where is he?

4th. Who was deputy clerk of said court at that time?

5th. Were you or not deputy clerk at the time referred to and for years thereafter?

6th. If you please, examine the inventory annexed hereto and marked "A" and state whether you know the recorder, Thomas D. McCandless, and also the appraisers and witnesses whose names are affixed to said inventory.

7th. Was Thomas D. McCandless considered a faithful and competent officer while he was recorder of the parish of Carroll?

8th. From your knowledge of the appraisers did you regard them as fair and competent appraisers, and do you consider that they made a fair and just appraisement of the property according to its situation and the condition of the times?

9th. Was the Raleigh plantation exposed to overflow when

122 this inventory was made in Sept., 1868, were the levees down, and what was the condition of the plantation as well as you remember?

10th. Were you or not present at many sales that were made by the sheriff at the door of the court-house, and did you or not observe the price at which lands were selling at auction sale?

11th. If yea, what was the rate per acre at which lands were selling under the hammer about this time?

12th. Were not fine lands frequently selling at almost a nominal figure, and do you remember at about what price they were selling at cash sales?

13th. What was the financial and political condition of the country in October, 1868, and what effect did it have on the cash sale of lands?

14th. Was there or not great scar-ity of money in the country at that time, and had there or not been great failures of crops and overflows in 1866 and 1867; and what effect did these causes produce on the price of lands?

15th. Did it or not come to your knowledge, as deputy clerk, that lands like this plantation were frequently at that time appraised and sold at as low a price per acre as the price fixed by the appraisers in making this inventory? And, if you remember instances of this kind, please mention them.

123 16th. If you say the price of lands was low at the time referred to, please give the reasons that operated to cause the great depression in the price of lands at that time.

17th. Have you any remembrance of the circumstances attending the appointment of C. R. Egelly as administrator of succession of Jas. Railey and the destitution of Frederick W. Boyd as dative executor?

18th. If yea, do you remember whether, while you were deputy clerk, any opposition was filed or made by said Boyd to the appointment of C. R. Egelly as administrator?

19th. Please examine the document annexed hereto, marked "B," purporting to be an opposition by Boyd to the appointment of Charles R. Egelly, and say whether you remember that it was filed among the papers of the succession of James Railey while you were in the office as deputy clerk; and also state in whose handwriting the document is written, and whether or not the parties signing the same were the attorneys of Frederick W. Boyd, executor of James Railey?

20th. Was or was not said document "B" filed pending the application of C. R. Egelly to be appointed administrator, and

124 was it or not regularly endorsed, marked, filed, and put away among the mortuary papers as was customary in like cases? And state fully anything you may remember about this matter.

21st. When did you finally cease to act as deputy clerk and under what clerk did you last serve as deputy?

22nd. Was or not this document "B" among the mortuary papers when you left the clerk's office?

To the witness J. W. DRAUGHON:

1st. Where did you reside and what was your occupation in 1868?

2nd. Who was sheriff of the parish of Carroll in 1868, and who was *chief* deputy in charge of the affairs of the office?

3rd. If you say you were *chief* deputy in charge of the sheriff's office in 1868, please state whether or not you have made many sales of lands and whether or not you are familiar with the rates at which lands were selling at forced sales in 1868.

4th. Do you remember whethert here was much demand for lands, and at about what rates were they selling in 1868?

5th. When the levees were down what was the usual price per acre at which plantations exposed to overflow were selling at forced sales for cash?

125 6th. Were not lands selling very low under the hammer in 1868? And, if so, please state the causes that produced the great depression of value of lands.

7th. Was or was not money very scarce in Oct., 1868, and had or not there been overflows and great failures of crops in the parish of Carroll?

8th. What was the financial and political condition of the country about that time?

9th. Were or not the people greatly discouraged at the financial and political outlook in 1868, and was there or not much uneasiness felt as to the future of the country?

10th. Have you or not seen fine lands selling about that time for almost a nominal price per acre?

11th. If you remember, please state about what price per acre you have seen fine plantations selling at forced sales for cash during the period inquired of, and give such instances as you may recollect.

12th. It has been proven in this case that the Raleigh plantation was exposed to overflows by the levees being down in 1867 and 1868; what effect did this produce upon the value of that plantation and others similarly situated?

126 13th. Were you or not present at the sale of that plantation to W. G. Wyly in October, 1868? And, if so, state whether or not it was an open, fair sale at public auction, by the administrator, C. R. Egelly, and was or was not the price given by him at about the usual rate at which similar sales had been made under the hammer? And if you remember the prices of other lands at forced sales about that time, please give some instances.

To all the witnesses:

1st. Do you know the parties to this suit or any of them, and how long have you known them?

2nd. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

[SEAL.] (Signed) JNO. T. LUDELING,
Solicitor for Def't.

Filed Oct. 5th, 1882.

A true copy.

Attest: WM. RAY,
Dep'y Clerk.

127 DOCUMENT "A."—Referred to and made part of the foregoing interrogatories.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that in pursuance of order and decree of the parish judge in and for the parish of Carroll, State of Louisiana, dated 16th day of July, A. D. 1868, authorizing and requiring me to take an inventory and cause an appraisement to be made of all the property belonging to the succession of the late James Railey, deceased—

I, Thomas D. McCandless, recorder in and for the parish of Carroll, State of Louisiana, duly commissioned and qualified, proceeded to take said inventory and cause said appraisement to be made by appointing John W. Hayes and Micheal Gingery, both residents of said parish and State appraisers, to whom I administered the following oath, to wit:

We do, each of us, solemnly swear that we will well and truly appraise and the true cash value place upon all the property belonging to the succession of the late James Railey, deceased, which may be submitted to us for our decision, to the best of our ability and understanding, so help us God.

JOHN W. HAYES.
MICHEAL GINGERY.

Sworn to and subscribed before me this — of Sept., A. D. 1868.
(Signed) T. D. McCANDLESS, *Recorder.*

128 Having thus sworn said appraisers we proceeded in presence of the undersigned witnesses to make the following inventory and appraisement:

ITEM.—*Land.*

All and singular that tract of land or plantation known as the "Front Railey" or "Raleigh" plantation, situated, lying, and being in the parish of Carroll, State of Louisiana, and in township No. nineteen, north of range thirteen (13) east, and bounded as follows, to wit: In front by the Miss. river; in the rear by lands of J. B. Beard; on the left or above by the lands now belonging to Dr. T. W. Lilly, k-own as the Salem plantation, and below by the succession of Jonathan Morgan, and more particularly described in the deeds of sale to said James Railey as follows, to wit:

Lots 33, 34, N. ½ of sec. 35, and S. ½ of sec. 35, and so much of lot 36 as will include the quantity of 600 acres; also the E. ½ of N. E. ¼ of sec. 55; also that tract of land bo't by James Railey from Mrs. E. Savage, containing 219 acres, being part of her plantation previously, and bounded on the lower or east side by the lane which separated the lands of the said Railey and Savage, the first half of said 219 acres embraced in a uniform strip of the same width running the full deptl. of Mrs. Savage's tract, commencing at the bank of the

Miss. river and running due south parallel with the lane aforesaid to land occupied by J. B. Beard; the second remaining
129 half of said 219 acres being embraced by a continuation of the front line up the river bank to a point terminating at the extremity of a piece of woodland, *while* then divided the said Mrs. Savage's "front field" from the back and thence due east to the intersection of the north and south line of the aforesaid half of said 219 acres; also that tract of land bo't by James Railey from J. H. D. Bowmar, commencing at the bank of the Miss. river on the line between the lands then owned by the said Bomar and Railey, at the place called the "Pecan Grove plantation;" thence running due south to the southeast corner of said Railey's said land; thence running east so far that by running the line first-above described to the bank of the Miss. river as will embrace and include 150 acres.

And also the balance of the said Bomar's land and Pecan Grove plantation bounded on the east by the lands of the estate of Johnathan Morgan; on the south by the lands of J. B. Beard and Wm. Henderson, and on the west by what was previously known as James Railey's "Raleigh plantation."

And all said different tracts together now composing the said Raleigh plantation and containing the quantity of sixteen hundred and eighty-eight $\frac{70}{100}$ acres (1,688.70) *acres*, more or less, ap-
130 p's'd at one $\frac{50}{100}$ dollars per acre, amounting to the sum of $2,533.05, twenty-five hundred and thirty-three $\frac{5}{100}$ dollars.

[Int. rev. stamp of $1.00, C. R. E., Sept. 21, '68.]
[Int. rev. stamp of $.50. C. R. E., Sept. 21, '68.]
[Int. rev. stamp of $1.00. C. R. E., Sept. 21, 1868.]

Thus done and inventoried and appraised at one sitting and without turning aside to other matters, at my office, in the town of Floyd, in said parish and State, in presence of Reuben S. A. McIntyre and Isaac P. Mathis, lawful witnesses, who hereto sign their names with said appraisers and me, recorder, on this the 4th day of September, A. D. 1868

(Signed) JOHN W. HAYES.
" MICHEAL GINGERY.

Attest: (Sig'd) R. S. A. McINTYRE.
" J. P. MATHIS.

[RECORDER'S SEAL.] (Signed) T. D. McCANDLESS,
Recorder.

[Int. rev. stamp, 5 cents.]

DOCUMENT MARKED B.—Referred to and made part of the foregoing interrogatories.

To the Hon. Geo. C. Benham, parish judge in and for the parish of Carroll, State of Louisiana:

131 The petition of Frederick W. Boyd, a resident of the State of Mississippi, with respect shows:

That he is the duly appointed executor of the last will and testament of Jas. Railey, late resident of your said parish and State; that

he has duly administered the property of the succession of said Railey since his appointment and confirmation as executor under the will. Petitioner further shows that an application has been made to your honorable court praying that E. R. Egelly, Esq., be appointed dative testamentary executor of the said succession, notwithstanding your petitioner is acting as executor of the same; wherefore your petitioner prays that the said application be rejected, and that the said applicant pay all costs of this proceeding, and for all general relief.

(Signed) GOODRICH, PILCHER AND MONTGOMERY, *Att'ys.*

(Endorsed in pencil marks on the back:) F. W. B. Petition for app't as executor." X opposition." 2 X."

132 Depositions of witnesses produced, sworn, and examined, on the days hereafter stated, at my office, in the town of Floyd, La., under and by virtue of the annexed commission issued out of the circuit court of the United States of America to take depositions in a certain cause pending and at issue between Mary E. R. Boyd, by, etc., *vs.* W. G. Wyly and Charles R. Egelly.

THOMAS D. MCCANDLESS, who being first duly sworn on the Holy Bible, on this the 11th day of December, in the year of our Lord 1882, doth depose and say as follows:

First. To the first interrogatory he saith: I resided at Floyd, then the parish of Carroll, now the parish of West Carroll, La. I was the recorder of said parish up to November, 1868, when my term of office expired.

Int. 2nd. I do not know the plaintiff, but am acquainted with the defendants & have known them for many years; also I have known Sparrow and Montgomery for many years.

Int. 3rd. I was the recorder of the parish of Carroll until my term of office ended, in November, 1868. The parish site of the parish of Carroll was at Floyd, as the parish was then constituted.

133 Int. 4th. I took the inventory of the succession of James Railey in the parish of Carroll on the 4th day September, 1868.

Int. 5th. I took it, in my capacity of recorder of the parish of Carroll, by virtue of a commission issued from the clerk of the court of the said parish directed to me officially, authorizing and requiring me to make said inventory. John W. Hays and Micheal Gingery were the appraisers, and they were appointed by me.

Int. 6th. I made the inventory, appointed the appraisers and swore them. They did appraise the property, they signed the oath, and also the inventory, as the original inventory annexed to the interrogatories shows.

Int. 7th. He could not sign his name (I mean the appraiser Gingery). The way his name appears written in a legible handwriting on said inventory was that I did the writing of his name while he

held the pen, he preferring to hold the pen while I did the writing to making his X mark.

Int. 8th. The appraisers, John W. Hays & Michael Gingery, were considered competent to make a fair and just apprais-ment, and
134 were disinterested and proper persons to appraise the plantation set out in said inventory, they having frequently acted as appraisers and being familiar with river plantations.

Int. 9th. No; I am not aware of any fraud or unfairness in the matter of taking said inventory.

Int. 10th. This inventory was made in the usual course of business; there was nothing peculiar about it.

Int. 11th. No; I have no recollection that either W. G. Wyly, Charles R. Egelly, Sparrow and Montgomery were present at the making of said inventory; on the contrary, I do not think that either of them was at Floyd at the time said inventory was taken; they did not advise or in any manner take part in or exercise any influence in the maater of taking said inventory.

Int. 12th. There was not, to my knowledge, any combination, collusion, or fraud between the above-named parties or any other persons to influence me or the said appraisers to make an unfair and unjust inventory and apprais-ment; on the contrary, the appraisement was a just and fair one, and there was no fraud in the matter nor fraud attempted.

Int. 13th. It was.

135 Int. 14th. It came to my knowledge (for I was frequently recording deeds) that property was selling at forced sales at very low rates, almost at a nominal price.

Int. 15th. Yes.

Int. 16th. Yes.

Int. 17th. There was a scarcity of money at that time caused from the results of the war, failure of crops, occasioned by overflow and worms, scarcity and disorganized condition of the labor, besides the political condition of the country at that time was disheartening to all the old citizens. Many thought the country would be Africanized and everything go to ruin.

To the first interrogatory propounded to all the witnesses:

Answer. I have known W. G. Wyly, Edward Sparrow, and J. W. Montgomery since I was a boy. I knew them before the war. I have known C. R. Egelly since 1867. I do not know the plaintiffs.

Answer 2nd. I know nothing further, except that the inventory and appraisement enquired about was just and fair, and the valuation of property was in keeping with the usual estimate of such property at that time, and that said property was exposed to overflow.

136 Further, the condition of the country at the time was such that there was scarcely no demand for property at that time, and, as before stated, the people were greatly discouraged by the losses of crops and the gloomy condition of affairs generally.

I know nothing further.

(Signed) T. D. McCANDLESS.

Sworn to and subscribed before me this 11th day of December, 1882.

[SEAL.] (Signed) W. A. HEDRICK,
Clerk Dist. Court, Parish of West Carroll, La.

JAMES W. DRAUGHON, who being first duly sworn on the Holy Bible, on this the 12th day of December, in the year of our Lord 1882, doth depose and say as follows:

To the first interrogatory he saith:

Int. 1st. I resided in Floyd, then the parish of Carroll, now the parish of West Carroll; I was the chief deputy in the office of W. W. Collins, sheriff of the parish of Carroll at that time.

2nd. As before stated, W. W. Collins was sheriff and I was chief deputy, having charge of the affairs of the office.

3rd. Yes; I have made more or less sales on the first Saturday of every month, and I, of course, was familiar with the
137 rates at which lands were selling at forced sales in 1868.

Int'y 4th. There was really no demands for lands in the year 1868, and such sales as were made were generally under foreclosures of mortgages or judgments and at very low rates, say from one to five dollars per acre, owing to the situation and location and improvement of the places.

Int. 5th. Sold almost at a nominal price; some as low as fifty cents per acre at cash sales.

Int. 6th. Yes; the loss of crops, worms, overflows, and general depression of feeling among the citizens, ma-y having abandoned the country.

Int. 7th. Yes.

Int. 8th. The financial condition of the country in 1868 was desperate, on account of losses sustained by planters from causes heretofore mentioned; and there was great discouragement on account of the political condition of the country at the time, many believing that the country would be Africanized, and by the reckless legislation and extravagant taxation the country would be completely ruined.

Int. 9th. Yes.

Int. 10th. I have; I have seen lands worth fifty dollars
138 per acre before the war sell under the hammer as low as fifty cents per acre frequently.

Int. 11th. I have frequently seen them sell at rates ranging from fifty cents to five dollars per acre, owing to location and condition of improvements and probable security from overflow. For instance, the Holland tract sold for fifty cents per acre on the 3rd of October, 1867, and that place was worth before the war from forty to fifty dollars per acre. As sheriff, I sold the Taylor tract on the 2nd October, 1869, for fifty cents per acre, which before the war sold for fifty dollars per acre. On the 3rd of October, 1868, as deputy sheriff, I sold the Templeton place, containing fifteen hundred and sixty-five acres, for the total price of one thousand dollars, which place would have sold before the war at seventy-five dollars per acre. The following places, to wit, Narcissa J. Morgan place, the Goza place, the

Green or Tibbets place, the Carson place, the J. C. Drew place, the C. A. De France place, the Govy Hood tract, containing 1,992 acres, the J. M. Galloway tract, the C. B. Richards tract, the Seaborn Wade tract, the A. M. Waddill tract, the W. C. Carrie tract, the George G. Wilson tract, the Mrs. Manning place, the W. L. Allen place,
139 the Henry Goodrich place, the W. H. Harris place, the Out Post place, the J. B. Williams place, the Rucker place, the S. L. Chambliss place, the Troutman place, all would have sold before the war at prices ranging from $40 to $75 per acre, and all have since been sold at merely nominal prices, not remembering now the exact amount of such sales; all of said places are in the allevial lands, formerly in the parish of Carroll, now the parish of East Carroll, and many of them situated on or near the Mississippi river, and were considered among the finest plantations in the parish before the war.

Int. 12th. It produced the effect that it would only have a nominal value, there being no demand for such property at that time.

Int. 13th. I think I was present at the sale of the plantation to W. G. Wyly, in October, 1868; said sale was made by C. R. Egelly, administrator, at public auction. As far as I could see the sale — fair and open, and the price given was about the usual rates such sales were — made under the hammer; as before remarked, the prices of other lands at forced sales range from fifty cents to five dollars per acre.

140 To the first general interrogatory to all the witnesses:

Answer. I do not know the plaintiffs in this suit. I know the defendants. I have known C. R. Egelly since 1867, and I have known for many years W. G. Wyly, Edward Sparrow, and J. W. Montgomery; I knew them before the war.

Answer 2nd. I know nothing else that would be benefit to any one of the parties, as I have fully answered all the interrogatories and disclosed all my knowledge of the matters and things inquired of.

(Signed) J. W. DRAUGHON.

Sworn to and subscribed before me this the 12th day of December, A. D. 1882.

[SEAL.] (Signed) W. A. HEDRICK,
Clerk Dist. Court.

ROBERT J. LONDON, who being sworn on the Holy Bible, on this the 12th of December, 1882, doth depose and say as follows:

To the first interrogatory he saith:

Int. 1st. My age is thirty-eight years; my occupation is notary public, magistrate, and mayor of the town of Floyd at this time.

Int. 2nd. I resided in Floyd in 1868; my occupation was
141 deputy clerk of the district court, in full charge of the clerk's office, being chief deputy.

Int. 3rd. John L. Cheatham was clerk of the district court at that time, and he is now dead.

Int. 4th. I was chief and only deputy clerk of the dist. court at that time, performing all the duties of the office at that time.

Int. 5th. Yes; I was deputy clerk from 1866 to 1871.

Int. 6th. I have examined the inventory annexed to the interrogatories marked "A." It is the original inventory of the property of the succession of James Railey, made on the 4th of Sept., 1868, by Thos. D. McCandless, recorder, under a commission issued by me as deputy clerk requiring him to make said inventory and appraisement. I know Thomas D. McCandless, the then recorder; I also knew and know the appraisers, John W. Hays and Micheal Gingery, and the witnesses, R. S. A. McIntyre and J. P. Mathis.

Int. 7th. Yes; he was undoubtedly a faithful, competent, and conscientious officer, and so regarded by everybody in the parish that knew him.

Int. 8th. Yes; I regard them as fair and competent apprais-
142 ers. I consider and believe that they made an apprais-ment in keeping with the general apprais-ment of and value of such property at that time and at the usual rates at which such property was then estimated.

Int. 9th. I know the country adjacent to and surrounding the Railey plantation was overflowed in 1867 and 1868, and I know the levees were down in that neighborhood and the condition of the place was delapidated like that of other overflowed lands.

Int. 10th. Yes.

Int. 11th. Lands were then selling under the hammer at a nominal price, ranging from fifty cents to three dollars per acre cash.

Int. 12th. Yes; as answered above, lands sold at that time at a mere nominal price under the hammer for cash; I have frequently seen good lands sell for less than fifty cents per acre about that time.

Int. 13th. Desperate, owing to the overflows, the worms, and consequent failures of crops and to the scarcity and insufficiency of labor; also the political outlook was discouraging to the people, and many thought the country would be Africanized and all the property virtually confiscated by high taxation imposed by corrupt legislation.

Int. 14th. Yes; there was great scarcity of money on ac-
143 count of the failures of the crops, caused by overflows, worms, and insufficient labor during the period enquired of; these causes, together with the general depression of the people by the political outlook, had the effect to reduce the price of lands in the country to a mere nominal rate, ranging generally from fifty cents to three dollars per acre at forced sales.

Int. 15th. Yes; I cannot recall the instances, but the records of the parish of Carroll will show that under writs issued by me as deputy clerk the same class of lands have sold at about the same rates frequently at that time; at that time lands of the kind were selling at a mere nominal rate; there were no purchasers hardly in the country and there was no demand for landed property.

Int. 16th. As before remarked, the failure of crops on account of

overflows, worms, and inefficient labor, together with the scarcity of money and the general depression of the people, were the causes of or reasons that operated to reduce the price of lands.

Int. 17th. I have a remembrance of the appointment of C. R. Egelly as administrator of the succession of James Railey and the destitution of the dative executor, Frederick W. Boyd; I do
144 not remember all the circumstances, but remember there was a contest or an opposition, and that Egelly was finally appointed.

Int. 18th. Yes; as before stated, there was an opposition filed.

Int. 19th. I have examined the document marked "B" and believe it to be the original opposition by Boyd to the appointment of C. R. Egelly. My impression is that it was marked, filed, and put among the mortuary papers of the succession of James Railey by me as deputy clerk, though the part of sheet upon which the title was written and the filing endorsed thereon seems to have been torn off. The handwriting of the said original opposition is that of Charles M. Pilcher, of the then firm of Goodrich, Pilcher and Montgomery.

Int. 20th. Yes; my impression is that said document was filed pending the application of C. R. Egelly to be appointed administrator. I know that an opposition was filed, and my impression is the document marked "B" is the one. The opposition I refer to was regularly filed and put away among the mortuary papers as was customary in like cases.

Int. 21st. In January, 1871, I ceased to act as deputy clerk.
145 I last served under Rob't K. Anderson, clerk of the district court.

Int. 22nd. The opposition filed to the appointment of C. R. Egelly (and, as I believe, the one annexed to the interrogatories) was among the mortuary papers of said succession when I left the clerk's office. I was always very careful with the papers of the office.

To first general question to all the witnesses:

Answer. I do not know the plaintiffs to this suit. I know the defendants. I have known C. R. Egelly since 1867. I have known for many years W. G. Wily, Edward Sparrow, and J. W. Montgomery.

Answer 2nd. I know nothing further, having answered fully all the questions and disclosed all my knowledge of the matters and things enquired of.

(Signed) R. J. LONDON.

Sworn to and subscribed before me this the 12th day of December, A. D. 1882.

[SEAL.] (Signed) W. A. HEDRICK,
Clerk Dist. Court, Parish of West Carroll.

146 R. S. A. McIntyre, who being first duly sworn on the Holy Bible, on this the 12th day of December, in the year of our Lord 1882, doth depose and say as follows:

To the first interrogatory he saith:

Int. 1st. I am fifty-three years of age; my occupation is that of a farmer.

Int. 2nd. I resided in the parish of Carroll in 1868. I was deputy sheriff in 1868 and I was also interested in the cultivation of a farm.

Int. 3. I am not acquainted with the plaintiffs in this suit. I am well acquainted with the defendants, and also with Sparrow and Montgomery. I have known C. R. Egelly since 1867, and I knew W. G. Wyly, Edward Sparrow, and J. W. Montgomery before the war. I have known them long and well.

Int. 4. I have examined the original inventory annexed to the interrogatories marked "A," and I can say that I was one of the subscribing witnesses thereto.

Int. 5. Yes; I was present at the taking of said inventory on the 4th of September, 1868.

Int. 6. Yes; I knew the appraisers—Micheal Gingery and John W. Hays—having known them long and well.

Int. 7. Yes.

Int. 8th. Yes.

147 Int. 10th. No; I am not aware that there was any fraud, collusion, or undue influence practiced by any one to obtain said apprais-ment.

Int. 11th. No; neither of the parties referred to in the 11th interrogatory had any hand in taking said inventory, nor were they present, nor did they use any influence, nor did they or either of them interfere with the recorder and the appraisers in making said inventory and apprais-ment.

Int. 12th. Yes; the appraisers, John W. Hayes and Micheal Gingery, were considered as competent persons to make a fair and just apprais-ment of the plantation set out in said inventory; they were impartial and proper persons to make the apprais-ment, having frequently acted as appraisers in other cases and being well acquainted with the value of river plantations.

Int. 13th. Yes.

Int. 14th. Yes.

Int. 15th. The price of property was very low; it was caused by the failure of crops and the overflows in 1866 and 1867, the worms also destroyed the crops during those years, besides the scarcity of and inefficieny of the labor had the effect to depreciate to value of property. The financial condition of the country was very

148 bad; there was no money in the country scarcely. As to the political condition of the country I can say the Warmoth government was organized and the negroes and carpet-baggers had complete control of everything. The old citizens were greatly discouraged at the political outlook, many of them beleiving that corruption and high taxation would impoverish the people and ruin the coun-

try. These were the causes mainly that broke down completely the value of property. I have seen property in 1868 frequently sell as low as fifty cents per acre, which property would have readily brought fifty dollars per acre before the war.

Int. 16th. Yes; I was at Floyd at nearly every sale day (the first Saturday in every month), and I saw a great deal of property sell at succession sale and sheriff's sales. I observed that the rate at which lands were sold per acre was very low at cash sales; the usual rates were from fifty cents to three dollars per acre for good lands, according to their location, condition of improvements, and probable security from overflows.

Int. 17th. Yes; I regarded the inventory annexed to these interrogatories as a fair and just one at the time it was made;
149 also the apprais-ment was made at about the usual rates at which such property was estimated to be worth when sold under the hammer for cash.

Int. 18th. The appraiser, Micheal Gingery, did sign the oath that was administered to him and also the inventory in my presence and in the presence of the other subscribing witness as the same purports to have been done in said inventory of the 4th of September, 1868. He signed in this way: He held the pen while Thomas D. McCandless, recorder, wrote his name in full; he could not write; he did not wish to make his X mark, but preferred to hold the pen while the recorder wrote his name to the oath and also to the inventory.

Int. 19th. Yes; Thomas D. McCandless was an honest, capable, and conscientious officer as recorder, and he was so regarded by all the people that knew him. He could not have been induced to *to* have made a false and unjust apprais-ment. The apprais-ment, as set out in the inventory annexed to these interrogatories, was a just and fair apprais-ment in every particular, and the property was estimated by the appraisers at its actual cash value at that time.

150 To the first general interrogatories to all the witnesses:

Answer. I do not know the plaintiffs in this suit. I have known C. R. Egelly since 1867. I — known W. G. Wyly *and* thirty-two years.

Answer 2nd. I have stated about all I know of the matters and things inquired of. I know that the apprais-ment and inventory of the 4th of Sept., 1868, was a fair and just one. The property was estimated by the appraisers at its actual cash value at the time. There was no collusion or fraud or undue influence exercised by W. G. Wyly, nor was there any by C. R. Egelly or by Sparrow and Montgomery. Neither of said persons were present, nor had they anything to do with the appointment of the appraisers or with the taking of the inventory. There was no interference in the matter by any one. The recorder alone conducted the matter; he appointed the appraisers, swore them in my presence, and they made the apprais-ment of the property in my presence at what they considered its just value, without any influence or suggestion from any one. As before remarked, lands were estimated at a very small figure,

say from fifty cents to three dollars per acre, at that time, according to its location, the condition of the improvements, and its
151 probable protection from overflow. The levees were down on the Raleigh plantation and it was exposed to overflow at that time, and it could not have been sold at forced sale for a greater price than was bid for it by W. G. Wyly when it was struck off to him at succession sale, when he became the purchaser, on the 20th of October, 1868. At that time property exposed at auction sale was at the mercy of the bidder or bidders that happened to have the cash, and there was very few in the country that happened to have the cash; also very few that desired to invest in landed property at that time on account of the financial and political condition of the country, the inefficiency of the labor, and the insecurity of the alluvial lands from destructive overflows. As deputy sheriff I frequently went all over the parish on business in 1868, and I had as good an opportunity as any one to know the cash valuation of property and the rates at which it was selling at forced sales for cash. I consider the valuation of the Raleigh plantation as made by said appraisers, Micheal Gingery and John W. Hays, was fair and just; it was all the property would bring and actually did bring
152 when it was struck off to W. G. Wyly at a fair, open, and public sale on the 20th of October, 1868. The sale was a fair one in every respect; no one bid any higher than W. G. Wyly, and the property was struck off to him at the appraised value by C. R. Egelly, administrator, he being the highest and last bidder. I know nothing further of the matters and things inquired — that would be of benefit to either of the litigants or material to the issues.

(Signed) R. S. A. McINTYRE.

Sworn to and subscribed before me this 12th day of December, A. A. 1882.

[SEAL.] (Signed) W. A. HEDRICK,
Clerk Dist. Court, Parish of West Carroll, La.

I, W. A. Hedrick, clerk sixth district court in and for the parish of West Carroll, Louisiana, duly commissioned and qualified, do hereby certify that I caused the witnesses, Thomas D. McCandless, James W. Draughon, Robert J. London, and Reuben S. A. McIntyre, witnesses hereinbefore named and examined, to appear before me at the time and place above named (at my office, in the town of Floyd, parish of West Carroll, Louisiana, on the 11th and 12th of December, A. D. 1882), and after publicly and solemnly swearing each of them seperately to tell the truth, the whole truth,
153 and nothing but the truth, in answer to the annexed interrogatories, I then and there proceeded to examine each seperately by propounding to him the said interrogatories and reducing in my presence and that of the witness his answers thereto in writing, with my own hand, and I then caused each witness to sign his deposition in my presence, as already stated. I further certify that everything was done in the matter of taking the depositions aforesaid in the presence of each of the witnesses and in my presence, as above stated.

In testimony whereof I have hereunto set my hand and seal of office officially on this the 12th day of December, A. D. 1882.

[SEAL.] (Signed) W. A. HEDRICK,
Clerk 6th District Court, Parish of West Carroll, La.

Entry in Chancery Order Book, Monday, March 5th, 1883.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
W. G. WYLY *et als.*
} In Equity. No. 1.

The defendant, Frederick W. Boyd, having entered his appearance to the bill of complaint herein, as amended, and not having demurred, pleaded, or answered to same within the delay allowed by law, on motion of Rob't Mott, Henry B. Kelly, & Chas. J. Boatner, solicitors for complainant, it is ordered that said bill as amended be taken *pro confesso* against the said defendant, Frederick W. Boyd.

154 *Order Assigning Cause for Trial.*

Extracts from the Minutes, April Term, 1883.

MONROE, WEDNESDAY, *May 9th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
WM. G. WYLY *et al.*
} In Equity. Docket No. 1.

By consent of all parties this suit was assigned for trial on Friday, May 11th, 1883.

Motion and Order.

Extract from the Minutes, April Term, 1883.

MONROE, LA., WEDNESDAY, *May 9th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD, by Her, &c.,
vs.
W. G. WYLY *et al.*
} In Equity. No. 1.

On the joint motion of the solicitors for complainant and defendants Wyly *et al.*, ordered that the depositions and proofs herein be published and this cause be fixed for hearing and trial on Friday, the 11th inst.

Motion. Filed May 9th, 1883.

MARY E. R. BOYD
vs.
W. G. WYLY *et al.* } In Equity. No. 1.

On the joint motion of the solicitors for the complainant
155 and defendant Wyly *et al.*, ordered that the depositions and proofs herein be published, and that this cause be fixed for hearing and trial on Friday, the 11th inst.

Motion.

Extract from the Minutes, April Term, 1883.

MONROE, LA., FRIDAY, *May 11th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

156 Mrs. MARY E. R. BOYD, by Her Next Friend, &c.,
vs.
W. G. WYLY *et al.* } No. 1

Complainant, by her attorney, Henry B. Kelly, files complainant's note of evidence and also files a motion to suppress.

Notice of Motion, &c.

Extract from the Minutes, April Term, 1883.

MONROE, LA., FRIDAY, *May 11th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD, by Her Next Friend, &c.,
vs.
W. G. WYLY *et al.* } No. 1.

Respondents, by their attorneys, Jno. T. Ludeling and J. R. Beckwith, files respondents' note of evidence and also files motion to suppress.

Motion to Suppress. Filed May 11th, 1883.

U. S. Circuit Court, Western District of La., Sitting at Monroe.
In Equity.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
W. G. WYLY *et al.* } No. 1.

157 The court is now moved, on behalf of the complainant, at the hearing of the cause, to suppress all testimony and documentary evidence offered on behalf of the defendant, W. B. Wyly, before J. B. Beattie, special examiner, to which exceptions were taken on behalf of complainant at the time of its being offered before

him, for the reasons stated in the exceptions so taken as shown by the *procès verbal* and return of said special examiner.

(Signed) HENRY B. KELLY,
Complainant's Solicitor.

Complainant's Note of Evidence. Filed May 11th, 1883.

United States Circuit Court for the Western District of La., Sitting at Monroe. In Equity.

MARY E. R. BOYD, etc., *vs.* W. G. WYLY *et al.* } No. 1.

Complainant's note of evidence.

Complainant offers—

1. So much of the answer of the defendant Wyly as admits the execution, purport, and probate of the will of James Railey and the copy of said will annexed to and made part of said answer, and so much of the said answer as admits the death of the testator, as set forth in the bill, and that at the time of his death he was the
158 owner of the Raleigh plantation described in the bill, and that James R. Carson accepted *as* qualified as executor of said will and died, and that thereafter and in or about the ninth of July, 1866, Frederick W. Boyd was appointed and qualified as dative executor of said will, as set forth in the bill.

2. The disclaimer of H. O. Railey filed of record herein.

3. Depositions of witnesses taken and documents and exhibits introduced before J. B. Beattie, Esq., special examiner, on behalf of complainant, and returned by him into court.

4. Certified copy of deed of sale, dated 2nd of August, 1873, from the marshall of the United States for the district of Louisiana to Ezra Wheeler and Co.

5. Deposition of witnesses taken and documents and exhibits introduced before M. M. Cohen, U. S. commissioner.

HENRY B. KELLY, *Solicitor.*

Copy of Deed of Sale from U. S. Marshall, &c., to Ezra Wheeler and Co. Offered in Evidence by Complainant May 11th, 1883, and Filed May 11th, 1883.

159 Circuit Court of the United States for the Fifth Judicial Circuit and Eastern District of Louisiana.

EZRA WHEELER & Co. *vs.* JOHN H. GREEN. } No. 6972.

Deed of sale to Ezra Wheeler & Co. Extract from Book of Sales, &c., No. 3.

Whereas I, S. B. Packard, marshall of the United States for the district of Louisiana, under and by virtue of a writ of seizure and

sale issued and to me directed by the honorable the circuit court of the United States for the fifth judicial circuit and district of Louisiana, at the suit entitled "Ezra B. Wheeler & Co. *vs.* John H. Green," No. 6972 of the docket of said court, after having fulfilled and complied with all the previous requisites, I did seize and take into my possession the following-described property, to wit:

All those certain tracts or parcels of land, together with the buildings and improvements thereon, farming utensils or aratory implements of all kinds, machinery, engings, stock, mules, and movable property thereon and thereto attached by destination, situated, lying, and being in the parish of Carroll, in this State, and comprising the following tracts, viz:

All of lots Nos. forty-one and forty-two; all that portion of
160 lots Nos. 43 and forty-eight which is on the west or upper side of a line running through said lots Nos. 43 and 48, and contains $472\frac{41}{100}$ acres, as per survey and sketch of survey made by Robert Boyd, surveyor, in January, 1870.

All of section No. eight and that part of section number seven, in township No. 19, range No. 14 east, as lies on the south side of a line running through said line No. seven, so as to embrace $157\frac{15}{100}$ acres and $243\frac{41}{100}$ acres of the north half of section No. 56, all of which lands are fully delineated in the aforesaid sketch of survey made by Surveyor Boyd, and fully described in an act of partition of same and other lands passed before D. E. Jenkins, a notary public, in said parish of Carroll, on the 23rd day of May, 1870.

And after having given due and legal notice to the said defendant of the said seizure in the manner pointed out by law, and having notified the said defendant to divide the property according to law, and having placed a keeper on the said property, and having taken the said property into my possession, I advertised the said before-described property for sale after the expiration of the legal delay from the time of said notice, to wit, on Saturday, the 21st June, 1873, by advertisement, composed in English, announcing the sale to take place at the court-house in the town of
161 Lake Providence, parish of Carroll, on the 2nd day of August, 1873, at 12 o'clock m. Said advertisement was inserted and published in English in the "Lake Republican," the official paper of the parish of Carroll, published at the town of Lake Providence, from the said 21st day of June, 1873, to the day of sale in each and every issue of said official paper during said time, being full thirty days from the date of the first notice given in said newspaper. Said advertisements were inserted and published in said official journal on June 21st, 1873, June 28th, July 5th, 12th, 19th, 26th, and August 2nd, 1873.

And after having further complied with and performed all the additional previous legal requisites, and after the said property having been duly appraised according to law under a plan and survey thereof submitted to me, which plan is on file in this office, I did expose said property for public sale according to law at the said court-house, in the parish of Carroll, on the said Saturday, August 2nd, 1873, at *at* 12 o'clock m., and at the same time and place of sale

I did announce in a loud and audible voice the terms and conditions of sale hereinafter expressed and specified, and did read *verbatim* in a loud and audible voice the certificate of the recorder of
161½ mortgages of the parish of Carroll delivered on the day of sale, by which certificate it appears that there are no other mortgages standing in the name of said defendant and recorded against the said before-described property than the following, to wit:

Mortgage in favor of Foster and Gwyn for the sum of $10,000, 8% interest from the 23rd day of May, 1870. Recorded in Book "I," folio 239.

Lien and privilege on all stock and personal property on Bell plantation in favor of Foster and Gwyn for advances for the year 1870. Recorded mortgage "I," folio 480.

Mortgage in favor of Foster and Gwyn for the sum of $3,723.61, interest at the rate of eight per cent. until paid, given July 14th, 1871. Recorded July 17th, 1871.

Mortgage in favor of Foster & Gwyn for the sum of $3,009.55, with interest at the rate of 8%, from March 7th, 1872, until paid. Recorded March 12th, 1872.

Given under my hand and seal of office this 2nd day of August, 1873.

M. A. SWEET, *Recorder.*

When Ezra Wheeler & Co., composed of Ezra Wheeler, Thomas Roundey, Augustus Ireland, and John V. Wheeler, being the last and highest bidders, each and every lot or portion of said property as hereinabove described in the plan hereinbefore annexed
162 was adjudicated to the said Ezra Wheeler & Co., composed of Ezra Wheeler, Thomas Roundey, Augustus Ireland and John V. Wheeler, for the price of each and every lot, as follows, to wit:

Lot No. 1.	C. L.	$534 00
Lot No. 2.	C. L.	667 00
	3.	1,567 00
	4.	667 00
	5.	667 00
	6.	667 00
	7.	667 00
	8.	667 00
	9.	667 00
	10.	667 00
	11.	534 00
	12.	534 00
	13.	435 00
Lot No. 1.	W. L.	262 00
	2.	262 00
	3.	262 00
	4.	262 00
Lot No. 1.	S. L.	75 00
	2.	67 00
	3.	67 00

4.	67 00
5.	67 00
6.	67 00
	$10,398 00

Making a total of ten thousand three hundred and ninety-eight dollars, being over two-thirds of the total apprais-ment, which amounted to 15,429.60 dollars.

163 Terms: Cash on the day of sale.

Which price the said purchasers, Ezra Wheeler & Co., *has* settled with me, marshal*l*, as follows, to wit:

Paid in cash marshal*l*'s costs and expenses	$445 25
Paid clerk U. S. circuit court	22 35
Paid surveyor for survey and plan	50 00
Paid taxes	420 00
Paid mortgage office	1 50
	$939 10

Making a total of nine hundred and thirty-nine & $\frac{10}{100}$ dollars.

And the balance of the price of adjudication, to wit, $9,458.90, the purchasers retain in their hands to be applied to the payment of their mortgage; five per cent. attorney's fees, as fixed by the act of mortgage, amounting to $930.15, were likewise retained by the purchasers as part of their mortgage claim.

Total of purchasers' mortgage and vendor's claim by writ and claim	$19,533 45
Balance of bid retained in part payment	9,458 90
Balance due purchasers after deducting amount retained	10,074 55

Now, therefore, know all men by these presents that I, the said marshal*l*, in consid*sid*eration of the premises and by virtue of the laws in such cases made and provided, do hereby sell, transfer, assign, and set over the aforesaid property to the said Ezra Wheeler

164 & Co., and all the right and — which the said defendant had in or to the said before-described property:

To have and to hold the same to the*ir*, the said Ezra Wheeler & Co., and their heirs and assigns forever.

In witness whereof I have hereunto signed my name, at New Orleans, in the State of Louisiana, this 2nd day of August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th year of the Independence of the United States of America.

(Signed) S. B. PACKARD, *U. S. Marshal*,
By T. W. DE KLYNE, *Deputy*.

Signed in the presence of the following competent witnesses:
(Signed) JOHN FAHY.
J. B. STOCKTON.

CLERK'S OFFICE.

A true copy of the original deed of sale.
New Orleans, August 14th, 1873.
(Signed) F. A. WOOLFLEY, *Clerk.*

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.
N. O., April 30th, 1882.
[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

165 *Motion by Defendant- to Suppress. Filed May 11th*, 1883.

United States Circuit Court, 5th Circuit *Court*, Western District of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

Now come the said defendants, by their said solicitors, saving and reserving unto themselves now and at all times the benefit of all and all manner of exceptions and objections to the proofs, depositions, documents adduced and offered herein by said complainant, saving and making all and all manner of exceptions and objections to the questions propounded to the said witnesses and to the answers of the said witnesses thereto, as well as to such as are apparent on the face of said depositions, as to such objections and exceptions as were made, taken, and noted by the examiner, and on all such depositions as were returned by the examiner; and they further move the court here that the following documents be suppressed in all things as supposed proof and evidence in this cause, and that they be severally not considered herein:

1st. The document termed transcript of the record of the Supreme Court of the United States, No. 297, Mathew T. Johnson, ex.,
166 etc., *vs.* Stephen S. Waters, etc., marked by the examiner No. 41.

2nd. The alleged breif of counsel prepared on said numbered and entitled cause in the circuit court of the United States for the eastern dist. of La. and returned in this cause by M. M. Cohen, special examiner, for the following reasons, among others:

1st. Because said documents make no competent proof relating or pertaining to the issues.

2nd. Because on the face thereof the same are not authenticated and are not material.

(Signed) J. R. BECKWITH,
Sol'r for Def't-.
" JNO. T. LUDELING,
Solicitor for Def't-.

Note of Evidence Offered by Defendants. Filed May 11th, 1883.

U. S. Circuit Court, 5th Circuit, Western District of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

The defendants offer on their part as evidence and proofs in support of their answer herein with its pleas and suggestions—

167 1st. The answer, with all exhibits and documents filed therewith or made part thereof.

2nd. All documents offered and produced before the examiner and by him returned with the proofs as defendants' exhibits, scheduled from 1 to 34, inclusive, and so filed and published, and documents by said examiner returned, marked, as offered by defendants, "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N."

3rd. Depositions of Thos. D. McCandless, J. W. Daughon, Rob't J. London, R. S. A. McIntyre, Wm. G. Wyly, Julius Aroni, taken on behalf of defendants, together with all and singular the documents and exhibits referred to in the said depositions.

(Signed) J. R. BECKWITH,
Sol'r for Def't.

(Signed) JNO. T. LUDELING,
Solicitor for Def't.

168 United States Circuit Court, 5th Circuit, Western District of La.

Mrs. MARY E. R. BOYD
vs.
WILLIAM G. WYLY *et als* } No. 1.

Appearances: Messrs. Mott, Kelly & Saunders, for complainant; J. M. Kennedy, Esq., solicitor for defendants.

Testimony taken in the above entitled and numbered suit, under the 67th rule of practice of the courts of equity of the United States, before J. B. Beattie, special examiner duly appointed and qualified to take depositions of witnesses in the above-entitled cause.

169 District Court of the United States of America for the Fifth Circuit, Western District of Louisiana, Holding Sessions in the City of Monroe. June Term, A. D. 1882.

FRIDAY, *the 30th day of June*, 1882.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, judge.

MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

It is ordered that J. B. Beattie, stenographer of the court, be appointed special examiner to take testimony in this cause in said parish of East Carroll; that complainant have forty days from the date hereof for her examination-in-chief, respondents thirty days next following for their examination-in-chief, and complainant have ten days thereafter for her examiner in rebuttal.

A true copy.

Attest: (Signed) JULIUS ENNEMOSER,
D'y Clerk.

(Endorsed:) U. S. circuit court, western district of Louisiana. No. 1. Mary E. R. Boyd *vs.* W. G. Wyly *et als.* Copy of order appointing special examiner.

170 Circuit Court of the United States of America for the Western District of Louisiana, Holding Sessions in the City of Monroe, La.

To J. B. Beattie, stenographer of the court:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you, at Lake Providence, such witnesses as shall be designated by complainant and defendants, and them duly examine orally under rule 67 of the courts of equity of the U. S. on oath touching and concerning certain matters in a case now pending in the said court, wherein Mrs. Mary E. R. Boyd, by her next friend, is complainant and Wm. G. Wyly and Charles R. Egelly are defendants, and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and also send this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, Monroe, La., this 1st day of July, A. D. 1882.

[SEAL.] (Signed) J. W. WHEATON, *Clerk.*

171 (Endorsed:) U. S. district court, western district of Louisiana. Mrs. Mary E. R. Boyd *vs.* W. G. Wyly *et als.* Commission.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana.

Mrs. MARY E. R. BOYD
vs.
W. G. WYLY *et als.* } No. 1.

It is hereby mutually agreed between counsel for complainant and defendants in the above entitled and numbered suit to waive the signatures of the witnesses to the transcript of their depositions,

the same having been taken in shorthand, said shorthand notes having been read over to and signed by the witnesses in presence of counsel.

(Signed) MOTT, KELLY & SAUNDERS,
Sol'rs for Complainant.

" J. M. KENNEDY, *Solicitor for Def'ts.*

172 *Order.*

U. S. C. C., 5th Circuit, Western District of La.

Mrs. MARY E. R. BOYD
vs.
W. G. WYLY *et als.* } No. 1.

In conformity with paragraph 5, section 67, of the rules of practice of the courts of equity of the United States, it is ordered that counsel for complainants and defendants shall give at least 10 (ten) days' notice to the opposing counsel of the time and place at which the examination of witnesses is to be held.

August 12th, 1882.

(Signed) J. B. BEATTIE,
Special Examiner.

Filed August 12th, 1882.

(Signed) J. B. BEATTIE,
Special Examiner.

First Day's Proceedings.

LAKE PROVIDENCE, LA., *July 17th*, 1882.

Present: J. B. Beattie, special examiner; E. D. Saunders, Esq., solicitor for complainant; Judge W. G. Wyly, one of the defendants, in person.

Counsel for defendants offered and had filed the following objection:

(Copy.)

173 As the case stands for trial solely on the exceptions and pleas of defendants and is not now at issue on the merits, dedants' counsel objects to the evidence sought to be elicited by the counsel of complainant from their witness, N. D. Ingram, and others touching the merits of the controversy, and defendants' counsel insists that no proof can be administered at this stage of the proceedings beyond the issues presented in said exceptions and pleas of def'ts, and therefore make this objection to the competency and admissibility of all parole evidence touching the merits of the case.

First Day's Proceedings.

LAKE PROVIDENCE, LA., *July 17th*, 1882.

N. D. INGRAM sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Ingram, what is your full name, your present residence, and how long have you been in this parish?

A. Nicholas D. Ingram; I have been in the parish forty years (40).

Q. What is your age?

A. Seventy years (70).

Q. In what occupation have you been engaged during your residence here?

A. In planting.

Q. In cotton planting?

A. Yes, sir.

Q. When did you first engage in cotton planting?

174 A. It has been fifty years (50) since I first engaged in cotton planting on the Mississippi.

Q. Have you continuously engaged in that business during the past fifty years (50)?

A. Yes, sir.

Q. Have you resided continuously in this parish during that period?

A. No, sir; I was in Mississippi ten years (10); I have been here forty years (40).

Q. Are you familiar with the purchasing price and yearly rental value per acre of cotton lands on the Mississippi river in this parish?

A. Well, land before the war was very high; it could hardly be purchased at all.

Q. I don't ask you now what the price was at any particular time; I simply ask you if you are familiar with that price. From your occupation and business, have you not known for a number of years past what cotton lands—Mississippi cotton lands—sold for in this parish?

A. Well, before the war they sold for something like sixty dollars ($60.00) per acre and upwards.

Q. I wish to know, Mr. Ingram, not if you are not acquainted with value of cotton lands at any particular period since you have been in the parish. If, for example, I ask what cotton lands

175 are worth now, can you not tell me?

A. I cannot, there being no sale for them; none that I know of.

Q. What is the usual rental value of lands per acre—cotton lands—since the war?

A. I have known them to rent for eight — ($8.00) or less; that is the most that lands have rented for in the last eight (8) years. I rent lands adjoining the town for six dollars and a half ($6.50).

Q. Do you own a cotton plantation in this parish?
A. I own one—that is, I have an interest in it. I own one-half (½) of it.
Q. When did you acquire your interest in it?
A. I bought it — 1874—that is, I bought one half interest in it.
Q. Did you yourself rent cotton lands prior to 1874?
A. I rented one year.
Q. What year was that?
A. In 1873.
Q. In what business were you engaged from 1866 to 1870?
A. I was engaged in planting.
Q. Were you working lands of your own?
A. I attempted it; I was overflowed two years.
Q. From whom did you rent cotton lands in 1873?
176 A. I rented some from Mr. Hood at five ($5) dollars per acre. In 1866 and 1867 I attempted to plant my own place and was overflowed again.
Q. What were you doing in 1868?
A. I was cultivating part of the Point Lookout place; it is about 12 miles from here; I cannot tell if it is so much; they change the levees so much that it makes it further; it use- to be called 16 miles.
Q. To whom did that place belong?
A. It belongs to Bass now; he had rented it or leased it; I went there and worked the place in partnership.
Q. How much rent did you pay per acre?
A. I did not pay any; he got the place in some sort of a trade; I went there and raised means to plant the place.
Q. What was the usual rental value of cotton lands in 1868?
A. I don't think they could be rented at all; the places was abandoned almost entirely—given up to negroes. We could not get any means to run them; there was no money in the country; I went to New Orleans; I could not get a dollar; there were no means in the parish, but I did succeed in getting some from Mr. Richardson; I was well acquainted with him and got some from him.
Q. Are you acquainted with the Raleigh plantation, on the Mississippi river, in this parish, which is now in possession of
177 William G. Wyly, which place belonged to James Railey before the war?
A. Yes, sir; I know the place.
Q. Were you acquainted with the place in 1868?
A. I was not on it. I have not been on it since the war.
Q. Did you ever pass it?
A. Oh, yes, sir.
Q. What was its apparent condition as — past it?
A. Well, I don't recollect that I noticed it. Judge De France and I passed it going to Vicksburg on horseback, but I don't recollect the condition it was in. I had no interest in it; the country generally was in a bad condition.
Q. Did you see it only once in 1868?
A. I don't think I did but once or twice going and coming. I know I past through the Marshall place, one of the finest places in

Madison parish. I don't believe they made seventy (70) bales on it, judging from appearances.

Q. Was that place overflowed in 1868?

A. No, sir; I don't know; not that I recollect of; which place — you mean?

By Mr. SAUNDERS: The Marshall place.

The WITNESS: No, sir.

Q. Was the Raleigh place overflowed in 1868?

A. I don't know; the levee broke down there somewhere. I don't recollect now.

178 Q. Do you know what improvements were on the place in 1868?

A. I do not; during the war the improvements were destroyed generally.

Q. You don't know whether they were destroyed on that place?

A. I do not.

Q. Was there a dwelling-house on the place in 1868?

A. I don't recollect.

Q. Do you know how many bales of cotton were made on the place in 1868?

A. I do not.

Q. Mr. Ingram, do you consider the sum of one dollar and a half ($1.50) per acre to have been a fair price for the Raleigh place in 1868?

A. Well, sir, it was considered a valuable plantation, I know.

Q. Do you think that was an adequate and fair price for that plantation in 1868?

A. I don't think it was. I don't think it was what it was worth, but there was no money in the country to buy anything.

Q. Do you think that the apprais-ment of a dollar and a half ($1.50) per acre for that plantation in 1868 was a serious and just valuation of it?

A. I should have appraised it higher, but *but* everything was very low and no money in the country. I cannot say what property was worth here at that time.

179 Q. Do you know whether any lands as valuable as those of the Raleigh sold in 1868 for as low a sum as a dollar and a half ($1.50) per acre?

A. Well, personally, I do not, but I could hear of these things, but paid no attention to them.

Q. Do you know of any cotton lands as valuable as those of the Raleigh plantation having been sold in 1868?

A. I do not; I was discouraged and paid no attention to it; didn't feel able to do anything.

Q. Do you remember what was generally considered a fair price for Mississippi cotton lands in 1868?

A. No, sir; I don't recollect.

Q. About.

A. It was just as I have stated before; everything was crushed here at that —; it appears nobody wanted to buy anything; there was no money in the country; those that had rented lands around

here—Mr. Douglas rented the Ford place. I saw letters to his nephew where they said they would make a thousand bales of cotton; they gathered seventeen bales; next year they made twenty-two; then he ran away with his mules; that was during the years 1866 and 1867; I don't think he did much in 1868; he ran off
180 then. I know Mr. Manning spent seventeen thousand dollars and made nine (9) bales of cotton during those same years.

Q. Mr Ingram, is not cotton raising the main occupation of the people of this parish?

A. Yes, sir.

Q. Does it require the expenditure of a considerable amount of money to run a cotton plantation?

A. Yes, sir.

Q. Is the cotton crop usually picked, marketed, and sold by October?

A. No, sir; since the war they generally begin picking about the first of October.

Q. Mr. Ingram, is it considered advisable and judicious to sell large cotton plantations for cash in the month of October in this parish?

Counsel for defendants excepts to the competency and admissability of the evidence of this witness, and this objection applies to all the foregoing answers of this witness, on the ground that the evidence sought to be elicited is not responsive to any of the issues presented in this controversy at this time; that said questions seek to elicit the conjectures and opinions of this witness, and do not seek to establish any substantative fact at issuein this controversy; that the testimony is irrelevant and incompetent; that recorded titles cannot be impeached by such opinions and conjectures of the witness.

181 A. Well, they do it sometimes; there is one to be sold next Monday, I believe.

Q. Is it considered generally advisable to sell large cotton plantations at that time of the year?

By WITNESS:

A. At forced sales?

Mr. SAUNDERS:

Q. Yes, sir.

A. Such things are generally done by agreement.

Q. Would you sell your own place at that season of the year?

A. If I could get my price I would; I would not be forced if I could help it; sometimes a man can't help it.

Q. What do you consider the best season of the year for selling large cotton plantations for cash?

A. Where they are forced to raise money, about the 1st of December is the better time than the 1st of January; a man can raise more money in December than he can in January.

Q. Were you acquainted with the late Micheal Gingery of this parish?

A. Yes, sir.

Q. In what part of the parish did he live?

A. At Floyd.

Q. How far is that from the Mississippi river?

A. It is about fifteen miles (15); something like that.

182 Q. What was his occupation?

A. He was a capenter by trade.

Q. Was he the owner or manager of a cotton plantation on the Mississippi river?

A. Not that I know of.

Q. Did he ever own or work a cotton plantation on the Mississippi river?

A. None that I ever knew of.

Q. Could he write?

A. I don't know whether he could or not.

Q. Would you rely upon his valuation of a cotton plantation on the Mississippi river?

A. Well, I don't know that I would; I don't think I would.

Q. Would you consider it safe to buy or sell Mississippi river cotton lands on the valuation set upon them by Gingery?

A. No, sir; I would not buy upon the judgment of any man.

Q. Would you consider Gingery peculiarly incompetent to value Mississippi cotton lands?

A. I don't think he was competent.

Q. If you had been the administrator of a succession would you have thought it right or proper to employ Gingery to value the cotton lands of that succession which were to be sold at a probate sale?

A. I would not.

183 Q. Are you acquainted with John W. Hays, of this parish?

A. Yes, sir.

Q. Where does he live?

A. I think he lives in this town now; he lived in the neighborhood of Floyd at that time.

Q. In 1868?

A. Yes, sir.

Q. What is his occupation?

A. He was a small planter.

Q. At that time?

A. Yes, sir.

Q. Would you have considered him competent to have valued Mississippi cotton lands?

A. Yes, sir; John Hays has as much sense as anybody almost.

Counsel for defendant objects to all these questions and answers on the ground set out in his previous objection, and upon the further grounds that the case is not at issue upon its merits, but only upon pleas and exceptions, and that the testimony of this witness is wholly irrelevant; that the questions and answers are not admissible in court to assail titles of record that have been standing undis-

puted for nearly fourteen (14) years; that the opinions and conjectures of this witness have no bearing upon this case whatever and ought not to be permitted to encumber the record.

184 Reserving the benefit of these objections, defendant's counsel propounds the following cross-interrogatories:

By counsel for defendant-:

Q. What was the condition of things in this parish in October, 1868, Mr. Ingram—the financial condition of things?

The WITNESS:

A. In 1868?

COUNSEL FOR DEF'T: Yes, sir.

A. They were as bad as they could be.

Q. What was the cause of this depression of the country in 1868?

A. Well, the disasters of the crops; there were no crops made, and the impression was the country would be "Africanized"—given up to the negroes.

Q. Please explain to what crops you refer as having been disastrous, and what was *was* the condition of the country with reference as to its being about to be "Africanized." Please specify in what years the crops were disastrous.

A. In 1866 and 1867. The crop was not so disastrous in 1868. I know on one of the largest places in the parish the negroes lived on "dewberries."

Q. Well, now, about the condition of the country in 1868?

A. Well, the country had got under the control of the radicals; Grant we knew would be elected.

Q. What effect did that produce on the business?

185 A. There was no business doing, scarcely.

Q. What impression did it produce on the country that there was to be a new party, a new government—that a new party would take control of things—did it injure or depress business; did it depress it a great deal; was there great discouragement among property holders by the political aspect at that time?

A. There was very great depression.

Q. Did this have the effect to depress the value of property in October, 1865?

A. Well, so far as I know, I don't think anybody wanted to buy property.

Q. Was there a general gloom over the country at that time at the outlook of things in October, 1868?

A. There was.

Q. You have stated you have known this parish for the last 40 years.

A. Yes, sir.

Q. I will ask you whether you ever knew things to look gloomier or bluer than they did in October, 1868?

A. I never did.

Q. Do I understand you to say that this depressed condition of affairs in 1868 was owing to the failure of the crops in 1866 and 1867 and the political aspect, all combined?

A. Yes, sir.

186 Q. Was there any land buyers in that country at that time?

A. No, sir.

Q. I will ask you whether any lands were sold any higher than those (referring to the Raleigh place) sold for in 1868 or in 1869?

A. I have no recollection of any prices; I lost all interest in the country and intended leaving it.

Q. You had become discouraged yourself?

A. I had intended going to South America.

Q. I will ask you whether you knew Col. Ike Harrison?

A. I did.

Q. Do you know of his going to Honduras about that time?

A. I was told he went; I have not seen him since. I knew the Peaks, a wealthy family, and Dr. Seays; they went to Honduras.

Q. I will ask you whether or not this discouragement was so great in October, 1868, owing to the disasters of the crops and unsettled condition of the country, that a great many planters were so discouraged that they were agitating the question of going to Honduras or somewhere else?

A. Yes, sir; that was a general feeling.

187 Q. I will ask you, from your knowledge of the condition of affairs, do you believe it was possible to have sold any real estate at a forced sale of any magnitude at a higher price than this property was sold for?

A. I don't believe they could; I don't believe any person wanted to buy property in the country; some bought for lawyers' fees and some for debts they could not get otherwise; that is — I know about it.

Q. This Balfour plantation, were you well acquainted with it?

A. Yes, sir.

Q. Do you know anything about the succession sale of that property; do you know what it brought?

A. I don't know what the price was; it was a fine plantation.

Q. Is that plantation as fine as the Raleigh plantation?

A. I believe it is fully as good.

Q. I will ask you whether or not the rental system that has prevailed in this parish has not been adopted since 1869 and 1870—renting out tracts?

A. By hiring the hands by wages?

Q In one (1) squad?

A. That is the way I did.

Q. Were these lands in 1866, 1867, and 1868—were they profitable to the people engaged in cultivating them—the farmers; did

188 they make any money by farming in this parish in 1868?

A. There was thousand- of dollars sunk; the boats went up loaded with mules—running them out of the country in 1868.

Q. I will ask you whether or not the results of the planting was

not so disastrous during the years mentioned that the people engaged in planting were impoverished and broken up?

A. Entirely; I heard Mr. Goza, one of the largest planters in the parish, had abandoned his plantation and taken his family and gone to Missouri.

Q. I will ask you whether Mr. Manning lost money trying this experiment in 1867?

A. Mr. Manning mortgaged his plantation in 1867 to a Mr. Angel, a northern party, for ($17,000) seventeen thousand dollars; he sunk every dollar of it.

Q. Planting what place?

A. He planted a place belonging to Sparrow; it was called the "Hopewell" plantation; he made nine (9) bales of cotton.

Q. What year was it that he made nine (9) nine bales of cotton?

A. That was in 1867; he abandoned planting altogether; in 1868 he went down the country and rented a little piece of land on the "Stamboul" plantation—about (80) eighty or 100 (hundred) acres.

189 Q. I will ask you whether during the years mentioned if the people that were engaged in planting did not lose all they had and become embarrassed and entirely impoverished?

A. They were. I know by experience, as I was as successful a planter as any that has ever been in the parish.

Q. I will ask you whether you have known of any plantation in this parish during the years mentioned that yielded a net revenue of ten dollars ($10.00) an acre or any revenue whatever to those cultivating them?

A. Nothing whatever. These men that cultivated the "Wiltson place," Mr. Hall, one of the agents or partners of Sprague & Co., told me they sunk three hundred thousand dollars ($300,000) there in 2 years. He got about three hundred bales of cotton in all.

Q. Do you remember other cases where there was great loss on these river plantations? If so, mention some of them.

A. Mr. Douglas, on the "Ford" place, gave four thousand five hundred dollars ($4,500), besides the improvements he had to put on it. This year, 1866, he made seventeen (17) bales of cotton; the next year he made twenty-two (22).

190 Q. That was all he made in those two years?

A. In those 2 years; yes, sir.

Q. What was the probable outlay incurred by him in expenses, by expenses incurred in making these seventeen (17) bales of cotton?

A. I could not undertake to guess.

Q. How much land did he cultivate? How much did it probably cost him to cultivate an acre?

A. I can't say; it cost a good deal of money I know.

Q. What did he probably lose by that planting speculation?

A. I saw some of his letters to his nephew in New York, Jimmy Douglas, stating that they expected to make twelve (1200) hundred bales that year. They made twenty-two (22) in all. That was the last year.

Q. He calculated on making twelve hundred (1200) bales and made twenty-two (22)?

A. Yes, sir.

Q. What was the probable expenses incurred?

A. I cannot say; it was immense.

Q. What did it cost to make a bale of cotton at that time?

A. Dr. Dubose out here raised a few bales. He told me it cost him two hundred ($200) dollars a bale.

191 Q. I will ask you whether or not in 1866 and 1867 it did not cost about twenty dollars ($20) an acre—an acre of land?

A. Yes, sir; all of that.

Q. On twelve hundred (1200) acres it would be twenty times that?

A. Yes; it would cost twenty-four thousand dollars ($24,000.)

Q. I will ask you whether it was the expenses on the Ford place that made it so unprofitable, or was only the yield of the twenty-two (22) bales of cotton?

A. They were economical; it was not the expense.

Q. I will ask you whether Col. Pilcher made any more farming on the "Ross" place during those two (2) years, or whether you know of any one that made a dollar in planting during those years?

A. I was on the Pilcher place a while.

Q. How many acres did he have in cultivation?

A. Why, they planted seven hundred or eight hundred (700–800).

Q. How many bales did they make?

A. They made sixty-one (61) bales on six or seven hundred (600-700) acres.

192 Q. I will ask you whether, from your knowledge of the country, the Raleigh plantation could have been sold at public auction at the door of the court-house for more than twenty-five ($2,500) cash, the amount paid thereon by the defendant, W. G. Wyley, on the day of sale, Oct. 20th, 1868?

A. I doubt if it could have been sold for more than that.

Q. Why was it that property was selling so low; what caused all this?

A. The causes I have stated.

Q. I will ask you whether or not it was owing to the existing financial condition of the country that property was compelled to be sold for small sums or not at all, at that time?

A. Yes, sir.

Q. I will ask you whether there was any land buyers with means prepared to buy lands at cash sales in the country at that time?

A. None to my knowledge.

Q. I will ask you whether, where property was forced upon the market, it did not necessarily sell low, owing to the condition of the affairs at that time?

A. Yes, sir.

Q. I will ask you whether or not the amount paid for the Raleigh plantation was not it- *is* actual cash value at that time?

193 A. Well, I suppose that would settle it; that is what I mean, because no one appeared to want any lands in the country; all the sales I heard were, as I stated a while ago,

bought in settlement of debts; people came to take them because they could not get anything else.

Q. I will ask you whether or not you have been acquainted with the defendants, C. R. Egelly and W. G. Wyly, a great many years?

A. Yes, sir; I have known Mr. Wyly since he was a boy.

Q. I will ask you what is the reputation of those gentlemen for honesty and integrity?

A. Very good.

Q. I will ask you whether they have been accused or implicated in any fraud or collusion to injure any one within your knowledge?

A. They never have.

Q. Is their standing as good as that of any other citizen in this parish?

A. Yes, sir; I have known Judge Wyly for over fifty years (50). I never heard anything against him.

Q. From your knowledge of Mr. Egelly and the other defendant do you believe they are capable of colluding to defraud Mrs. Boyd or any one else?

A. No, sir.

194 *Agreement.*

It was understood and agreed at the commencement of this examination between counsel for complainant and defendants that they would make their objections after the witnesses had got through their testimony, and that these objections would be considered as having been made at the time the testimony objected to was given.

Counsel for complainant objects to all of the testimony just elicited from the witness, N. D. Ingram, on cross-examination, that was hearsay and irrelevent, and he specially objects to the said witness' statements from hearsay as to the loss of — incurred in the cultivation of particular plantations and to the witness' statements from hearsay as to the discouragements and intentions of particular planters.

S. T. Le May sworn and examined on the part of complainant.

Direct examination by Mr. Saunders:

Q. Mr. Le May, what is your age?

A. I am sixty-three years of age, sir, last April.

Q. Where do you reside?

A. I reside in this place, sir.

Q. How long have you resided in this parish?

195 A. I have been here since the war; a few years previous.

Q. What has been your occupation?

A. The first few years after the war I planted and supervised the business for other parties in planting; since then I have been engaged at chiefly the hotel or boarding-house business.

Q. Do you know what was the usual purchase price and rental value of cotton lands per acre on the Mississippi river in 1868?

A. I don't know of any lands selling in this country in 1868, only

those that sold at public auction, and they, of course, sold for a nominal sum as they might have bidders.

Q. For what did such cotton lands rent for in 1868?

A. I really don't know; they rented for a portion of the crop, or so much cotton per acre. There were no lands rented here for money that I know of, except occasionally you would find men who would rent a whole place for so much money—a dollar or six dollars, whatever it was.

Q. In 1868, can you tell whether or not the rent of cotton lands was eight or ten dollars ($8.00 or $10.00) an acre?

196 A. As I have stated before, lands were not renting for money; land was renting for so much cotton per acre, generally about seventy-five (75) or eighty (80) pounds of lint cotton per acre—that is, where those lands were rented to laborers; where land was rented in a body it rented for much less.

Q. Were you acquainted with the Raleigh plantation, in this parish, in 1868?

A. Not very particularly acquainted with it; I knew it; it was one of the best plantations in the parish when protected from overflow.

Q. About how much cleared land was there on that plantation?

A. I am unable to say, sir; I was not sufficiently acquainted with it to say.

Q. Was there a dwelling-house on that plantation in 1868?

A. I don't know whether there was or not.

Q. Do you know what was the condition of *of* the fencing and drainage on that plantation in 1868?

A. The drainage, I presume, was a good deal choked up for want of attention; the fencing, I suppose, was all destroyed—measurably so.

Q. Do you — what crop of cotton was made on that place in 1868?

A. I do not; the only thing I know about the place in 1868 was the upper end had no levee; this end of the front levee was all gone; much of it was overflowed; how much of it was overflowed I can't say.

197 Q. Do you consider the sum of $1.50 (one dollar and fifty cents) an acre to have been a fair price for that land in 1868?

A. I would not consider that a dollar and a half ($1.50) an acre was value of the property. I should not have supposed so.

Q. In your opinion what was that land worth an acre in 1868?

A. I cannot say, sir; the financial condition of the country was such that valuable property was at the mercy of those who happened to have a little capital—in other words, you might say that property had no real value.

Q. Do you consider that the apprais-ment of that plantation at a dollar and a half ($1.50) an acre was a serious appraisement of it?

A. I don't know, sir. I can't answer that question. I had nothing to do with it. I knew nothing of it.

Q. Do you consider it just appraisement?

A. I cannot pass upon other men's acts; that appraisement was made by other parties; if they appraise it according to their judg-

ment I have no right to pass upon it, at least I think so, and for that reason I shall have to waive a direct answer to the ques-
198 tion, only as I have given it. I told you previously I did not think a dollar and a half ($1.50) an acre was the value of the property.

Q. Mr. Le May, is the month of October a favorable time of the year for selling large cotton plantations for cash?

A. Well, sir, I don't know that it makes any material difference as to what season of the year a plantation is sold; cotton plantations generally get into the hands of monied men; capitalists have as much money at one season of the year as another. I would not think it would make much difference.

Q. Were you acquainted with Micheal Gingery?

A. Yes, sir; I knew him.

Q. Where did he live?

A. I think his home was in Floyd in the western portion of Carroll parish.

Q. What was his occupation?

A. He was a carpenter, I think, sir.

Q. Did he ever own or manage a cotton plantation?

A. Not that I know of, sir. I only knew him in the capacity of a carpenter, sir; he may.

Q. Could he sign his name?

A. Indeed, sir, I cannot say. I never had any business transactions with him.

199 Q. Would you have considered it proper to appoint Gingery appraiser of a cotton plantation to be sold under his apprais-ment at a probate sale?

A. Well, sir, I hardly know how to answer that question. Mr. Gingery was a citizen here, and I suppose looked upon generally as being competent to do duties of that kind. However, I think there are men in this portion of the country, in the immediate vicinity of the plantation, that would have been more competent to appraise property than he was.

Counsel for defendant- objects to the testimony of this witness:

1st. Upon the same grounds set out in their objections to the testimony of the previous witness, to wit, that this case, not being at issue upon the merits, but only at issue upon the pleas and exceptions, that no parole evidence is admissible beyond the issues presented in said pleas and exceptions.

2nd. That the statements of this witness amount to nothing, but are his conclusions and opinions generally as to matters and things in the country, and he has no knowledge of any substantive facts competent to be proved under the issues presented in this case; that his testimony is hearsay, irrelevent, and has no bearing upon the
200 issues of this case as it now stands for trial upon the pleas and exceptions.

Reserving the benefit of the foregoing objections and exceptions in regard to the competency and admissibility of this evidence, counsel for defendant- propounds the following:

Cross-interrogatories by counsel for defendant-:

Q. I will ask you, Mr. Le May, whether or not Mr. Micheal Gingery did not have the reputation of being an honest and good citizen?

A. I knew nothing else of him.

Q. Was his general reputation as a citizen that of an honest and upright man?

A. So far as I knew, that was his character.

Q. Was he considered a man of good character, straightforward and honorable, in the community generally?

A. As to his judgment, I cannot say how he was looked upon in the community. I have previously answered the questions as to his being an honorable and upright citizen.

Q. You never heard anything to the contrary?

A. I never heard anything to the contrary.

Q. Now, I will ask you whether or not there was in October, 1868, and during the year 1868, a general gloom and great de-
201 pression over the financial condition of things in this parish among the people?

A. I would, to answer that question in a few words, say that there was.

Q. I will ask you whether or not the planters of this parish, in 1866 and 1867, were not pretty thoroughly broken up and disgusted with the system of free labor as an agent for producing crops in this parish, and what was the result and general experience of the planters in producing these crops—were they fortunate or unfortunate in their enterprise?

A. I would say, in answer to that question, that the free labor had been tested to the injury—the financial injury—of every man that had taken hold of it; so much so that but very few could get sufficient advances to do anything for a few years thereafter.

Q. I will ask you whether or not the people that went into this planting speculation and experience in this parish—whether or not they were thoroughly broken up by the results of those two (2) years?

A. Nearly all the capital that was brought to this country for the purpose of planting was lost, the men broken up, and returned to their homes—most of them.

202 Q. You mean those Northern men that brought their capital down here to try the experiment of raising cotton with free labor were unfortunate and lost their money generally?

A. That is what I allude to. The years of 1866 and 1867 were experimental years. Most of them lost their money and left the country after the experience of those (2) years.

Q. I will ask you whether or not, in the beginning of 1866, there was not great demand for plantations by these Northern capitalists that came here in order to try their experiment of raising cotton with free labor?

A. Yes, sir; the country was crowded with men wanting property.

Q. I will ask you whether or not during those two years there was

not a fictitious value placed upon farming lands in this parish, owing to the fact that a great many Northern men were here to try the experiment of raising cotton with free labor?

A. I should say there was.

Q. Please state, if you know, any instance where lands were rented at high rates to Northern men during those two (2) years.

A. I really don't know the rates of rent, but I know there
203 were several places rented for which the men were unable to pay.

Q. Do you or not know of numerous instances where, during those years (1866–1867), you could get as much as ten dollars ($10) to an acre from these Northern men to get on the place to try it?

A. I don't know that I call to my mind any place that rented for that money, but lands were rented for different prices; whether any land rented for that price I can't say. I know, though, that rents were fabulous; I know that.

Q. You mean during 1866 and 1867?

A. Yes, sir; during those two (2) years.

Q. I will ask you, Mr. Le May, what caused this change from 1866 & 1867 to 1868—what produced this revulsion?

A. I would answer that question by saying the insufficiency of the labor and withdrawal of capital, etc., was what produced it, and the losses that had been sustained in planting in previous years.

Q. I will ask you whether or not there were not immense sums spent by the people of this parish and those Northern capitalists by those planting experiments in 1866 & 1867?

A. Everything that was invested, so far as I knew, was lost.

204 Q. I will ask you whether, on many of these plantations that formerly produced a thousand (1,000) bales of cotton, whether or not they yielded during those years 1866 & 1867 fifty (50) or seventy-five (75) *seventy-five* bales of cotton?

A. There were places, a number of them I know of, that had the capacity, when well cultivated, to produce from five hundred (500) to a thousand (1,000) bales of cotton. They never attained, any of them, over a hundred (100).

Q. Mr. Le May, I will ask you if you are well acquainted with the plantations of this parish?

A. Yes, sir.

Q. Now, I will ask you whether you know of a single instance or exception to the rule that people engaged in planting in this parish did not experience a total loss of their investment as the reward of their labors and efforts to raise cotton by free labor during the years 1866 & 1867?

A. I think it likely Sutton's & Lombard, on the "Vista" plantation, perhaps held their own; with that exception, I don't know of any.

Q. I will ask you whether they employed Chinese labor or not?

A. They employed Chinese labor in 1868.

Q. From their experience with free labor were they not disgusted with it?

205 A. They employed Chinese labor in consequence of the colored labor not being profitable or reliable.

Q. What was about the cost at that time to cultivate an acre of cotton? You have had large experience.

A. I never went so far into the details as to ascertain that fact.

Q. Suppose you had a plantation of a thousand (1,000) acres, how much *would* capital would it require for you — work it at the price of *of* wages that prevailed in 1866 & 1867?

A. I would have to make some calculation; I was going to say I suppose twenty-five thousand dollars ($25,000).

Q. That would be about the capital you would require to cultivate a place of one thousand (1,000) acres during *the* that period?

A. Yes, sir.

Q. I will ask you whether you have known many plantations during those years, the expenses of which amounted to that sum, which actually yielded but seventy-five (75) or a hundred bales of cotton?

A. I was not sufficiently acquainted with the expenses of parties outside of my own supervision to say what were the expenses; I would like to be excused from answering that question otherwise than by supposition or something of that kind.

206 Q. What did I understand you to say, that planters and those cultivating lands here in 1866 & 1867 experienced a loss of nearly all their capital by their experiment of those years?

A. According to my experience and observation in the country, everything was lost.

Q. Now, sir, I will ask you whether these disasters in 1866 & 1867 in the agricultural interests of this parish, whether or not they caused great depression in the value of property in 1868?

A. I would say it did.

Q. Did not a great reaction set in and did not property fall down to almost a nominal sum or value in this parish on account of these disasters?

A. I would say that property had scarcely any value; property was almost valueless; it was at the mercy of any man that had money.

Q. Do you mean to say that after these great losses of the failures of the crops that property could only be sold for a nominal price, or at such prices as bidders chose to give?

A. Property under the hammer could only be sold at such prices as men of means felt disposed to give for it.

Q. Was there much inquiry—much disposition about this time, October, 1868, to invest in lands?

A. Very little.

207 Q. Do you think, in October, 1868, the Raleigh plantation, if exposed at public sale for cash, could have been sold for any more than it did sell for, to wit, twenty-five hundred and thirty-three — ($2,533.00), or thereabouts?

A. I don't suppose it could for the reason it did not. There was no money in the country.

Q. I will ask you whether or not the planters of this parish about

that time were not greatly discouraged by the situation of affairs in the parish, and the change of government that was going on, and the experiences and loss of the previous years; were they not discouraged and gloomy in their anticipations about the future of this country?

A. Exceedingly so.

Q. Do you know the "Balfour" plantation?

A. I do.

Q. Was that considered a fine plantation before and since the war?

A. One of the best in the parish; it had no superior.

A. I will ask you how far that plantation is from the town of Lake Providence?

A. About four (4) miles, sir.

Q. I will ask you about how many acres in that plantation do you remember?

A. My recollection is that it measured about nine hundred (900) acres of open land—cultivated land.

208 Q. Do you remember how many acres there were in the tract?

A. Sixteen hundred and some odd in all.

Q. What did that place sell for Feb'y 9th, 1869?

A. Three dollars an acre, according to this deed (referring to a deed handed him).

Q. I will ask you whether the Raleigh plantation has a caving front?

A. Yes, sir.

Q. Is it affected by "seepage water," which is not the case with this Balfour property?

A. I should say it was.

Q. I will ask you whether the levee caved there in 1868?

A. My recollection is that the upper end of the place—the levee on the upper end of the place—was gone, caved off some time during the year 1868.

Q. I will ask you — saw it at that time, it did not have a dilapidated look—if the plantation did not look to be in a dilapidated condition in 1868?

A. I should think it did. From appearances it was quite dilapidated.

Q. I will ask you whether or not from the condition that property was in in October, 1868, it could either have been rented or sold for a large amount in the condition it was then in?

209 A. I have answered that question before; I don't think it could have sold for any more than it did sell for, owing to the condition of the place and the condition of the country.

Counsel for complainant objects to what the witness has stated as hearsay and to what he has said in reference to the financial and political condition of the country. Reserving these and all other legal objections and exceptions to the testimony given by this witness, counsel for complainant propounds the following:

Redirect:

Question. Was that place overflowed in 1868?

A. The upper portion of it was—I think it was—I won't be positive, but that is my recollection.

JOHN W. HAYS sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Hays, are you a resident of this parish?

A. No, sir; not of this parish; I am a resident of West Carroll; you might say this was my residence—I live here.

Q. How old are you?

A. I am 67.

210 Q. How long have you resided in the parish of West Carroll?

A. Well, sir, I have lived in this and in that parish 32 years.

Q. Mr. Hayes, were you appointed appraiser of the estate of James Railey in 1868?

A. Well, sir, I don't recollect; I was appointed appraiser of so many places, because them days I was always around Floyd appraising a heap of things; I don't recollect.

Q. Can't you remember whether you ever appraised the Raleigh plantation, belonging to Mr. Railey's succession?

A. Well, sir, I can't say to save my life whether I did or did not; I know I appraised property, but I don't know what property; swamp property over here somewhere; we live in the hill country; it is very little higher than this, but I don't know what property it was; I don't remember the place.

Q. Do you remember anything about it?

A. I have a faint recollection of appraising that property now, since I see all of that (referring to certified copy of inventory to which his signature is attached or appended).

Q. Well, Mr. Hays, do you remember who were the attorneys in that case?

A. No, sir; I do not.

Q. Do you remember whether Messrs. Sparrow & Montgomery were the attorneys?

A. I do not, sir.

211 Q. Do you recollect whether Mr. Gingery acted as appraiser with you?

A. I think he did.

Counsel for defendant- reserves the same objections to the parole testimony of this witness as set out in his objections to the examination of other witnesses upon the ground that at this state of the proceedings it is incompetent to interrogate witnesses upon the merits of the case, which is not now at issue, the sole issue being the facts raised in the pleas and exceptions, to which complainant has filed a replication, and nothing therein justifies the admission of testimony save documentary evidence.

Reserving these and all other legal objections to the competency

of the evidence of this witness, counsel for defendant- propounds the following cross-interrogatories:

By counsel for defendant-:

Q. Will you be kind enough, Mr. Hays, to state whether you knew Micheal Gingery?

A. Yes, sir; I knew him well.

Q. Where is Mr. Gingery now?

A. He is dead.

Q. Was he considered an honest and reputable citizen during his lifetime in this parish?

A. Yes, sir; thought a great deal of.

Q. Was he an old citizen?

A. Yes, sir.

212 Q. Was he considered a man of good, fair judgment and integrity?

A. Yes, sir.

Q. Was he called upon often to act as appraiser around the court there at Floyd during 1868 and previously?

A. Yes, sir.

Q. The record shows that you and Micheal Gingery acted as appraisers of the Raleigh plantation when the inventory was taken by Thomas D. McCandless, recorder, on the 4th of September, 1868. Please state whether you made a fair and honorable and just apprais-ment of that property at that time as you understood the matter to be and the records of your appointment shows.

A. Well, sir, we were sworn; we certainly done the best of our knowledge. The property was very low; it was torn all to pieces; the levee was down. Plenty of good land in our country here appraised at six bits. I have seen it appraised here in this parish at six (6) bits an acre.

Q. Mr. Hays, I would ask you if this planting business in 1866 & 1867 did not result in great loss to the people here on the Mississippi river that were trying to plant by free labor.

A. Yes, sir; I think they most all broke.

213 Q. I will ask you if you were not one of the wealthy men in this parish during that time—that is, man with ready money.

A. Yes, sir; I suppose I was considered as much so as any man in the parish; most of them, at least.

Q. I will ask you if you did not have as much ready cash as any old citizen here at that time.

A. Well, sir, I don't know. I think I had.

Q. As much gold?

A. Yes, sir.

Q. As any old citizen? I don't refer to men coming here from the North.

A. Yes, sir; any old citizen.

Q. I will ask whether or not you were actually engaged in the business of buying and selling land?

A. Yes, sir.

Q. And have as good an opportunity to know the value of lands as any other man in the parish?

A. Yes, sir; I think so.

Q. I will ask you if the Northern men that brought their money down here to try the experiment of raising cotton by free labor did not get thoroughly broken up by the failure of the crops in those years.

A. Yes, sir; they did.

214 Q. I will ask you, Mr. Hayes, if in 1868, when this sale took place—October, 1868—whether there was not such a great crisis and pressure in the country that the sheriff was seizing everything around here.

A. Yes, sir; stock and mules.

Q. Everything, most, was under seizure?

A. Yes, sir.

Q. I will ask you whether or not there was a great deal of dissatisfaction throughout the country and the people disheartened by their losses in planting and disorganization of labor in 1868.

A. Yes, sir.

Q. Mr. Hayes, this plantation sold on the 20th October, 1868, for the full amount of the appraisement, to wit, twenty-five hundred and thirty-three dollars and five cents ($2.500.05). I will ask you whether, from your knowledge of the condition of the country, you think it was possible to have sold that place on that day at public auction for any higher sum than that.

A. If it had been, somebody else would have bid over it.

Q. I will ask you, Mr. Hayes, if you were not frequently about the court-house at public sale days during that period.

A. Yes, sir; I was always on hand at public sales—nearly always.

215 Q. I will ask you, Mr. Hayes, if property during that time was not so low in value that for a few dollars per acre you could buy any of it that was exposed for sale.

A. Yes, sir.

Q. I will ask you, Mr. Hayes, if there was any change of government going on about that time and whether or not a great many people thought the country would be Africanized.

A. Yes, sir.

Q. Didn't this fact have some effect in breaking down the price of property at that time?

A. Yes, sir; it did.

Q. Do you know the defendant, W. G. Wyly, well?

A. Yes, sir; I do.

Q. Did he have anything to do with this matter of the appraisement or ever have any conversation with you upon that subject?

A. He did not.

Q. I will ask you if Judge Montgomery ever had any conversation with you upon the subject or had anything to do with the appraisement of the property.

A. He did not.

Q. I will ask you whether Charles R. Egelly was present or had anything to do with apprais-ment.

A. No, sir; he did not.

Q. Mr. Hayes, the record shows that you were appointed by Thos. D. McCandless to act as appraiser with Mr. Gingery in that case. I will ask you if Mr. McCandless was not the only man that ever spoke to you or asked you to make an apprais-ment of that property.

A. Yes, sir.

216 Q. I will ask you, Mr. Hayes, if that property was not appraised and sold like various other pieces of property at that time.

A. Yes, sir.

Counsel for complainant reserves the same objections heretofore urged and all other legal objections & exceptions to the testimony of witness on cross-examination.

S. T. LeMay recalled by complainant:

Counsel for complainant says that he was this morning taken by surprise by the statements made by the witness, Mr. LeMay, in regard to the rental value and purchasing price of the Raleigh plantation, and he said counsel may have been mistaken in his conclusions as to said testimony. He now recalls the witness in order that he make his said statements more full and explicit or reconcile them with the statements heretofore made by him, the said witness, as to similar matters.

217 Q. Mr. LeMay, I wish to ascertain whether I correctly understood your testimony this morning as to the rental value of the Raleigh plantation in 1868; will you please tell me now what your estimate of the rental value of that plantation for that year is?

Counsel for defendant- objects on the ground that counsel for complainant is attempting to cross-examine his own witness, which is incompetent in any court of justice; that this witness has been examined in chief and cross-examined; that he has completed his deposition, signing the same, gone off and left the place of taking the depositions. Since then other witnesses have been examined, and now complainant's counsel is attempting by this method to impeach the veracity and credibility of his own witness and to cross-examine, which no court ought to sanction; that, offering said witness, he vouched for his credibility. He has, therefore, no right to attempt by cross-examination to impeach the integrity or honor of his own witness.

Defendants' counsel further objects on the ground that the evidence is incompetent; that the evidence sought to be elicited thereby is not responsive to any issues raised by the replication to the exceptions and pleas filed in this case, and upon which the case is being prepared for trial; that it is *res inter alios acta;* that the opinions and conjectures of this witness are not admissible in evidence and cannot be admitted on the trial of said pleas and exceptions.

218 Q. Mr. Le May, I wish to ascertain whether I correctly understood your testimony this morning as to the rental value of the Raleigh plantation in 1868. Will you please tell me now what your estimate of the rental value of that plantation for the year 1868 is?

A. I don't think I placed any rental estimate on that property. My recollection is I don't think that interrogatory was made exactly in that way. It was as to the rental value of property in the community.

Q. I now ask you what was the yearly rental value of the Raleigh plantation in 1868?

To this question counsel for defendant- reserves the same objection as *to* heretofore made.

A. I was not sufficiently acquainted with the condition of the Raleigh plantation at the time to say what the rental value of it was.

Q. Now, Mr. Le May, what was the rental value of cotton plantations on the Mississippi river in the year 1868?

A. Well, where plantations rented out in the whole it would average a good deal. For instance, Judge Wyly buys land; he places it at a certain rate. Some other gentlemen would rent that same place for a certain amount or more. I don't think I could

219 place any figures particularly. In 1868, I think it was, "Spencer's plantation," in "Bunche's Bend," rented for twenty-seven hundred dollars ($2,700) to Sutton. I think there was about six hundred acres of that land; my recollection does not serve me as to any other property that I could say what it rented for. There was other property rented, but not feeling particularly interested in other men's business I paid no attention to it particularly, and consequently I can't say what it rented at. I might make a mistake as to the rental value of the property at that time. When you come to rent to negroes as tenants they would pay about seventy-five (75) or eighty (80) pounds of lint cotton to the acre.

Q. What was the value of lint cotton that year?

The WITNESS: 1868?

Mr. SAUNDERS: Yes, sir. In other words, what was the equivalent in money of seventy-five (75) or eighty pounds of lint cotton that year?

A. I think the average value of lint cotton for that year was twelve (12) or (15) fifteen cents. I won't be positive. I was not selling any.

Q. Mr. Le May, what was the average selling price of fair cotton lands per acre on the Mississippi river during the year 1868?

A. I am unable to say, sir.

220 Q. What did you consider, then, to be a just and fair price for ordinary cotton lands on the Mississippi river?

A. Well, at that time I could not have placed any estimate upon them. The country was in such a condition there was no value to anything here, scarcely; every thing seemed to be hung on wire; had no value to it really.

Q. Mr. Le May, did you not testify in the case of Gay against Morgan, No. 6612 of the docket of the circuit court of the U. S. for Louisiana?

A. I think I was a witness in that case.

Q. Do you remember testifying in that case as to the value of ordinary cotton lands per acre on the Mississippi river in the year 1868?

Counsel for defendant objects to this incisive and persistent effort on the part of counsel for complainant to cross-examine his own witness and, if possible, to impeach his credibility. Counsel for def't also objects to all this testimony sought to be elicited on the ground that the same is not responsive to any of the issues pending in this case; that the conjectures and opinions of the witness cannot have any other effect than to unnecessarily encumber the record with matter foreign to the issues of this case; that there is not a
221 substantial fact sought to — el*l*icited that any court of justice for a moment would consider as having any bearing upon the issues presented on the trial of the pleas and exceptions to which plaintiff has replicated; that by said replication the only issues presented to the court are issues of fact as to judgment of court destituting dative executor, Fred. W. Boyd, and judgment appointing Charles R. Egelly administrator, judgment ordering inventory of the property, and the judgment ordering the sale of the property and judgment homologating the final account of Charles R. Egelly, administrator, decreeing a distribution of the funds, as set out in the tableaux by said administrator, and the cancelling of his bond and discharging him from further duty in said succession; in other words, the questions at issue are questions of law and *res adjudicata*. Pleas of prescription, pleas to jurisdiction, pleas to want of proper parties are questions of law that cannot in any manner be affected by parole testimony, having reference, if to anything at all, only to the merits of the controversy, which are not yet at issue; consequently defendants' counsel objects to all this effort to hold an inquisition in the parish of Carroll to ascertain whether this piece of property or that piece sold at a too high or too low price fourteen (14) or fifteen (15) years ago, and is an effort to test the memory of citizens
222 as to matters and things that transpired nearly a quarter of century ago: all of which is irrelevent to the issues in this case.

By Mr. SAUNDERS:

Q. Do you remember testifying in that case as to the value of ordinary cotton lands per acre on the Mississippi river in the year 1868?

A. I can't say that I remember that I testified anything relative to the value of lands, though my memory may be treacherous on the subject; I can't say.

Q. Are you certain that if you did testify in that case as to the value of cotton lands that your testimony was correct?

A. Well, it was correct, according to my judgment. Whatever I might have testified to at that time was correct. What I testified then was correct.

Q. I wish to show you what you did testify to, and now hand you your testimony in that case—the case of Gay against Morgan—and ask you if that statement is true?

Counsel for def't- objects to this question and to this effort to cross-examine on the part of counsel for complainant his own witness; counsel for def't- specially objects to this question as a leading question; that it is attempted to lug into this case matters and things that have no reference to it, and to bring up evidence taken in proceedings between other parties, which has no reference to
223 this case, and complainant's counsel cannot by a species of cross-examination of their own witness either impeach his testimony or if possible elicit something more favorable to them than was elicited on the first examination; that counsel for complainant is resorting to this expedient that ought not be allowed in a court of justice; that the witness has been fully interrogated, has given his testimony-in-chief, has been cross-examined, and discharged. Def'ts' counsel therefore submits that at this stage of the proceedings it is not proper to seek to have witness reproduced and examine him in relation to matters and things that were elicited in a different litigation between different parties, and thereby indirectly introduce evidence in this case which is not admissible.

By Mr. SAUNDERS:

Q. Have you just read the testimony which you gave on the 28th of Feb'y, 1878, before S. D. Oliver, special commissioner in the case entitled Gay against Morgan *et als.*, No. 6612, of the docket of United States circuit court for the district of Louisiana?

Counsel for defendant- objects to this question on the ground that it is a leading question and upon the ground that the answer sought to be elicited has no reference to any of the issues
224 now pending in this case; that the only effect of such questions and answers seems to be an effort on the part of counsel for complainant to cross-examine his own witness and if possible impeach his testimony; that it is wholly irrelevant and inadmissible to determine any of the issues involved in this controversy. Therefore counsel for def't- objects to such question and whatever answer is made thereto.

A. I have, sir.

Q. After reading your testimony in that case referred to is your memory at all refreshed as to the value of cotton lands in this parish on the Mississippi river in 1868?

The WITNESS: What do you mean as to value—for sale or rent or what?

Mr. SAUNDERS: For sale.

The WITNESS: Thus far it is refreshed. Lands in certain localities would be worth very much more than those in certain other localities. The testimony I have just read in the case referred to, Gay against Morgan, refers to lands entirely protected by levees from overflow, while the lands of the Raleigh plantation in ques-

tion were, as before stated, in the year 1868 without a levee on certain portions of the front, and therefore subject to *to* overflow, and therefore of less value than other lands. At the same time
225 I was not aware of the fact that I had placed an estimate on the value of these Morgan lands; that is about all I can say. As to the rental value of the lands, I don't know that I am very far from the same in one case than I am in the other.

Q. In that case, the case of Gay against Morgan, what did you testify was the rental value of cotton lands?

Counsel for defendants objects on the ground that the record of that case alone—Gay against Morgan—would be the best evidence if the same were admissible to establish the fact sought to be elicited, and no other proof would be admissible in reference to the contents of that record, but that the record of said suit, being a controversy between different parties and different subject-matters to the issues presented in this case, is wholly inadmissible to affect the issues of this case; that said record is *res inter alios acta*, and cannot be introduced in evidence in this case; that said record itself being the best evidence of its contents, not being admissible evidence in this case; that the testimony of this witness sought to be introduced without any reference to that case is but a second-hand effort to introduce the issues of a previous litigation between different parties into this case by the parole testimony of this witness, and this in a court of justice ought not to be allowed.

A. I think it was eight or ten dollars ($8.00 or $10.00) an acre.

226 Q. What do you now in this case testify to be the rental value of the Raleigh plantation?

A. I have not placed any rental value on the Railey plantation. I stated repeatedly that I did not know.

Q. You say that the levee on the front portion of the Raleigh plantation in 1868 was broken down?

A. Yes; the upper portion of it.

Q. When was that levee replaced?

A. I think, if I am not mistaken, in the winter of 1868 and '9; I think so; I will not be positive whether it was replaced permanently or not. The levee we had was called a "protection levee," a "run-around;" I don't recollect; I won't be positive if it *if it* was replaced even at that time; but I think it was.

Q. How much of the Raleigh plantation was overflowed in 1868?

A. I am unable to say, sir.

Q. Were the lands on the Raleigh plantation of average good quality?

A. That has been my understanding, but I am not intimately acquainted with the character of the lands on the Raleigh plantation; I have been across the place a few times.

Q. When were you across the place?

A. I don't recollect the date, sir; several times in my life.

227 Q. When the lands of the Raleigh plantation are protected

by levees is that plantation or not as valuable as other cotton plantations in this parish?

A. I presume it is, sir, save the caving of the bank; caving banks are never estimated so high as banks that don't cave; that has been a caving bank for the last twenty (20) years, I believe.

Q. Has the levee on the Raleigh plantation broken since 1868?

A. It has coned off several times since, sir. I don't know that it has broken in any other way, only I know it has caved off several times since that date (1868).

Q. Has that plantation been overflowed since 1868?

A. It was overflowed this year, sir.

Q. Was it overflowed this year in consequence of the levee in front of it breaking?

A. I don't know whether it was overflowed from the break in the levee in front or just above. It broke off above in many places there for a space of eight (8) or nine (9) miles.

Counsel for def't- repeats his objection to all of these questions, and, according to the agreement of counsel, this objection is to be considered as having been made at the time these questions were propounded and answered. Counsel for def't- objects to the
228 competency and admissibility of the parole testimony of this witness and all other legal objections that may be suggested in court when they are sought to be adduced.

Reserving these objections, counsel for defendant- propounds the following cross-interrogatories:

By counsel for def't-:

Q. I will ask you, Mr. Le May, to explain how it is that lands are rented to freedmen at from seventy-five (75) to eighty (80) pounds of lint cotton to the acre? I will ask you whether or not this is the mode by which the planters gets his land cultivated? Having to advance all the supplies and furnish the mules and incur all the expenses, I will ask you whether or not this method of farming is resorted to for the purpose of making the negro man a better laborer on the plantation and whether or not he is a mere laborer on the plantation; the whole thing being at the risk of the proprietor, whether or not the loss falls on the proprietor regardless of any arrangement with the laborers in case of a short crop?

NOTE.—Question read over to witness.

A. Well, I presume one — the reasons for doing that is to get entire control of the crop. In the first place, the rent notes have control over a sufficiency of the cotton to pay the rent; in
229 the second place, where a planter furnishes his hands he takes control of the remaining portion of the crop to identify him for the supplies he furnishes. The object is, no doubt, to give the negro an interest in the cultivation of the crop and lands and to make him a better agent than he otherwise would be. He is only, after all, a mere laborer; all the risk is on the proprietor.

There is no doubt but that whole loss is sustained by him, the laborer being irresponsible.

Q. Is not this particular feature of renting lands to the laborer here since the war, the object being to get him to work better merely?

A. It is so understood here and expressed by all of our planters, I believe, that such is the better method of managing the labor.

Q. I will ask you, Mr. Le May, whether or not, as a matter of truth and fact, notwithstanding these paper arrangements, whether or not the planter has not generally lost money by entering into engagements with labor since the war?

A. I say he has, sir.

Q. I will ask you, Mr. Le May, whether or not from your experience the laborers of this parish have been enable to pay their supply bill, their mule rent, and the landlord; whether or not the result has not been a loss to one or the other of these accounts?

230 A. I don't suppose *their* is one planter in ten (10) in the parish that to-day can show on his books a balance sheet that will show a profit on the same, although he is entirely une-cumbered by the negro. There is not one (1) negro in ten (10) in the parish but is more or less in debt to his landlord or his supply merchant or for his mule hire.

Q. I will ask you, Mr. Le May, if, notwithstanding these big claims for rent, there has actually been any profit to the planter by this free labor since you have been acquainted here since the war—clear profit I mean?

A. I don't know a man in the country that has made it a profitable business, as I stated before to-day. I believe I did instance Sutton & Lambert as having made something in 1866 and '67. I think I might say that Dr. McCollough, a resident of our parish, made some money by his planting operations.

Q. Do you know of any other case?

A. I do not, sir.

Q. I will ask you if you don't know of a great deal of large losses that planters in this parish have sustained in this experiment of renting lands to the colored people?

A. The loss has been very general, with a few exceptions.

231 Q. I will ask you if all the planters of this parish were not involved in debt and with mortgages upon their property—upon the property of many of them—caused by their advancing to freedmen upon their plantation in order to get this delusive promise of fabulous rent?

A. So far as the mortgage on property is concerned, I am unable to say how common that is; but as to the thrift of the country, that speaks for itself. We see every day and our eyes show us it is not in a thrifty condition.

Q. I will ask you, Mr. Le May, if these large rents that these Northern men promised to give when they came down here for these lands, if in many instances they were not mere promises? Didn't they break up and run away without paying anything?

A. I think most of them did.

Q. I will ask you, Mr. Le May, if while these big rents were offered in 1866 and 1867 by these Northern men for rent of land in this parish, eight (8.00) and ten ($10.00) dollars an acre, if the result of the experiment of these years, 1866 and 1867, were not so disastrous as to ruin them, and if they did not run away, most of them, and leave unpaid a large amount of indebtedness that they had contracted here in their efforts to cultivate lands by free labor?

232 A. I don't think they paid their rents here in a good many instances. They left a good many debts contracted by them unpaid.

Q. I will ask you whether, as a matter of fact in your testimony previously given, if you did not state the figures promised by these Northern people, or whether, as a matter of truth, they were unable out of any of the proceeds of their crops to pay those large rents for the lands in 1866 and 1867?

A. The crops being an entire failure in consequence of the ine-ficiency of the labor, they, of course, failed to meet the demands for rent only by an excess of capital; they were never paid from the proceeds of the place, at least.

Q. Mr. Le May, do you think that, notwithstanding these large nominal rents promised by these Northern men and these large rents promised by the freedmen, that there is a plantation in the parish that has yielded any revenue, any net revenue, from the crops or proceeds of crops produced thereon since the war?

A. I think I have fully answered that question in a good man-instances, though perhaps not exactly in the same language; I have answered it by saying I don't think there was any profit arising from the cultivation of the lands in the country; planters

233 may have in some instances gotten some improvements on their places by having laborers upon them that they otherwise would not have gotten.

Q. Do you think from your knowledge of the cotton plantations in this parish that they have been a source of great revenue to any one?

A. I do not.

Q. Outside of the gentlemen you have named that have had some success, do you think of any others in the parish that have been successful by these planting experiments, that you know of?

A. I think I would have been likely to have heard something about it, though I don't know it of my own knowledge.

Q. Well, do you know of any that have even held their own?

A. I think I could mention one or two (1 or 2) other parties that have held their own at it.

Q. Couldn't you mention cases in which people have lost their whole fortune at this experiment?

A. I could, sir.

Q. On the whole, then, do I understand you to say that, from your observation and experience, cotton planting with free labor has not been a success in this parish?

A. It has not; no, sir.

Q. Has it been a source of much loss to the people?

A. Yes, sir; and much annoyance.

234 Q. I will ask you whether or not nearly all the old citizens that raised money to try this experiment of raising cotton with free labor were not ruined by it in 1866 and 1867?

A. A majority of them were, sir.

Q. I will ask you, Mr. Le May, whether or not, having been a practical business man yourself, if the business had been profitable would you not have continued it and not abandoned it?

A. I think I would.

Q. Do I understand you to say you abandoned it because it was not profitable—was not a success?

A. Yes, sir; that is why I quit.

Counsel for complainant excepts to the foregoing cross-interrogatories and answers thereto on the ground that the witness cannot testify as to the pecuniary success or failure of his neighbors' business; that if the success or failure of such persons' business be a material fact in this case it should be proved by their own testimony and not by vague hearsay.

Counsel for complainant reserves all other legal objections and exceptions to the relevancy and admissibility of the testimony of this witness.

235 And, neither party offering and being ready to examine any other witnesses this day, I adjourned the examination herein ordered, in the presence of all parties, until Tuesday, July 18th, 1882, at the same place.

(Signed) J. B. BEATTIE,
Special Examiner.

Second Day's Proceedings.

LAKE PROVIDENCE, *July 18th*, 1882.

N. D. INGRAM recalled and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Before re-examining the witness, counsel for complainant states that he was yesterday morning taken by surprise by the statements made by the witness in regard to the rental value and purchasing price of cotton lands in this parish during the year 1868; that the statements of the said witness on these points seem to be at variance with the statements he has previously made on the same point. Counsel for complainant therefore recalls him in order that his attention may be drawn to the apparent conflict between his testimony of yesterday and his prior testimony on the same subject, and in order that he may have an opportunity of explaining or removing this conflict, if in fact it exists. Counsel for complainant

236 proposes therefor to call the witness' special attention to his former statements on these points, and asks witness to reconcile said statements with his testimony of yesterday morning. Counsel for complainant further adds that the witness was recalled for this purpose yesterday afternoon, but for want of time was not

re-examined. Having made the above statement, counsel for complainant now propounds the following interrogatories:

Q. Mr. Ingram, were you not a witness in the case entitled Gay against Morgan *et als.*, No. 6612 of the docket of the United States circuit court for the district of Louisiana?

A. I was.

Q. Did you not in that case testify as to the general rental value and sale value of cotton lands on the Mississippi river in this parish?

Counsel for defendants objects on the ground that counsel for complainant having examined the witness in chief yesterday, and the witness having been cross-examined also by counsel for def't- and discharged, it is incompetent for counsel for complainant to recall said witness for the purpose of traversing his answers made on the examination-in-chief; that the object of this effort can only be to attack the credibility of said witness, which is incompetent for complainant to do, having made him
237 her witness; that the effect of the questions propounded and to be propounded is in the nature of a cross-examination instituted by complainant whereby they seek to traverse the answers of this witness in chief. Defendants' counsel also objects that the question propounded is not responsive to any of the issues pending at this time in this case; that the succession of Gay and what was said therein by this witness and other witnesses are matters *res inter alios acta*, have no reference to this case, and ought not to encumber the record, and that said testimony is wholly irrelevent.

NOTE.—Question repeated.

Q. Did you not in that case testify as to the general rental value and sale value of cotton lands on the Mississippi river in this parish?

A. I did.

Q. Tell me, Mr. Ingram, whether or not the "Raleigh plantation" is as good as the "Albin," "Wilton," and "Melbourne" plantations.

A. I don't believe it is as good; not as well protected from the river.

Q. Is it of greatly inferior value to those plantations?

A. Well, I don't know as it is greatly inferior.

NOTE.—To these questions counsel for defendant- reserves
238 the same objections on the ground of irrelevancy and inadmissibility, and on the further ground that complainant's counsel cannot cross-examine his own witness.

Q. How much inferior in value would you regard the Raleigh plantation to the before-mentioned places?

A. All these other plantations are much larger, go farther back, and are not caving banks, but these are all productive places. Numerous bayous run into these places. I lived on the "Bell" place four (4) years.

Q. Is or is not the lands on the Raleigh plantation of as *as* good quality as the lands on the above-mentioned places?

A. Well, I suppose there is not much difference.

NOTE.—To this question and answer counsel for defendant- reserves the same objection as heretofore made.

Q. Is or is not the difference in value owing to the difference in size of these plantations?

A. I suppose the soil is pretty much the same.

Q. Mr. Ingram, I wish now to call your special attention to the exact language you used in testifying in the before-mentioned case of Gay against Morgan.

A. I don't know as I recollect all I said in that case. If you will read what I said——

239 Mr. SAUNDERS, reading from the testimony of the witness given in the case of Gay against Morgan: "Yes, sir; the 'Albion' and 'Melbourne' plantations were as valuable before the war as 'Wilton.' They were equally productive and all improved and in a high state of cultivation. Witness regarded the 'Wilton' plantation and the other lands as free from overflow before the war as any other lands in the country; has never known of his own knowledge that 'Wilton' was ever overflowed. It is very high, and allways considered a very safe place. Witness regards 'Wilton,' 'Melbourne,' and 'Albion' as valuable plantations as any in the parish of Carroll since the war, and thinks they are free from cocoa grass, except in one little patch which he has seen since the war; that such plantations have been rented frequently since the war for from eight to ten dollars ($8.00 to $10.00) per acre; that he, witness, is renting his own lands to his les-ees for about that price this year, and that price has been customary and usual as the rent of lands on the Mississippi river in the parish of Carroll ever since the war. Witness does not know of any lands on the river having been rented for less than that price since the war; that in the years 1866, 1867, 1868, and 1869 the price of rent of lands like 'Wilton,' 'Melbourne,'

240 and 'Albion' was about the same as now; that he went to that neighborhood to rent lands in 1866 and was asked therefor ten dollars ($10.00) per acre rent. Good lands like those mentioned were readily rented during the years mentioned and since at from eight to ten dollars ($8.00 to $10.00) per acre; that he has regarded and does regard these lands belonging to Judge Morgan's estate as very valuable property. Witness thinks that these lands have been and are now worth about one-half (½) as much as before the war." Mr. Ingram, I show you that deposition with signature attached. Will you tell me whether that is your signature?

Counsel for defendant- objects, and says that it is incompetent to interpolate in this record any abstract or portion of the record in the case of Gay against Morgan, which was a controversy between different parties; that that record is wholly inadmissible as evidence in this controversy; that the introduction of such abstract can only be intended on the part of complainant as a means of cross-examination of his own witness, for whose credibility he has vouched when he introduced him upon the stand, and in law it is utterly inadmis-

sible for such latitude to be taken in administering testimony in a case; that there is nothing in the pleading which justifies the introduction of the record in the case of Gay against Morgan or any abstract thereof; that it is wholly incompetent for counsel for complainant to read from the record in that case, which is not
241 in evidence, the foregoing abstract to this witness, which can only be designed as a means of obtaining from him, if possible, a more favorable statement in response to the questions and answers in chief heretofore given by this witness.

Counsel for deft. objects that the foregoing question is a leading question, and the abstract before quoted can only be regarded as effort to prompt the witness of complainant, and, if possible, adduce more favorable responses to the questions and answers given by this witness in chief yesterday; the whole being irrelevant.

NOTE.—Question repeated.

Q. Mr. Ingram, I show you that deposition with your signature attached; will you tell me whether that is your signature?

A. Yes, sir; it is.

Q. Did you make that statement or any similar statement in the above refer-ed to case?

The WITNESS: Which statement do you mean?

Mr. SAUNDERS: The statement I have just read.

The WITNESS: I don't understand you; which—that affidavit?

Mr. SAUNDERS: Yes, sir.

The WITNESS: Yes, sir; I believe I did.

Q. Will you explain how that statement is reconcilable with what you testified to yesterday?

A. I did not testify as to the value of "Raleigh;" I said I would have appraised it higher if I had been one of the appraisers.

242 Counsel for defendant- objects to this question and answer for the reasons heretofore given.

Q. On yesterday I asked you the general question as to the value of Mississippi cotton lands and as to the rental value of those lands.

A. Well, I stated rents were very high, but nobody paid them; they all ran away; I expect I am the only man in the parish that paid his rent for the year 1866.

Q. Is that all the explanation you have to give?

A. I will answer your question, sir.

Counsel for def't- objects to this question, and states that — is manifestly an effort on the part of complainant's counsel to cross-examine his own witness, and if possible impeach his credibility, which is inadmissible: that this testimony, these questions and answers, and indeed all the questions and answers of this witness in this case, are entirely foreign to the issues now pending on the pleas and exceptions to which complainant's counsel have replicated; that the sole questions now at issue are questions of law, such as jurisdiction, want of proper parties, pleas to jurisdiction, and want of interest in complainant to set up any claims to this insolvent succession; that the whole tenor of the testimony sought to be elicited

thus far by complainant's counsel from this witness has no reference to this case, but are in reference to matters not
243 now at issue; that they are *res inter alios acta*, and the sum and substance of this witness' testimony is nothing but a tissue of conjectures and opinions as to this man's property or that man's property, and the same has no reference to the controversy involved in the litigation between Mrs. Boyd and the defendant; therefore counsel for def't- objects to all this testimony and protests that the same should not be permitted to encumber the record.

Reserving the benefit of these and all other legal objections to the competency and admissibility of the depositions of this witness, def'ts counsel propounds the following cross-interrogatories:

Q. I will ask you, Mr. Ingram, if in 1866 and 1867 there were not a great many Northern men who came down here to this parish for the purpose of trying the experiment of raising cotton with free labor?

A. There was.

Q. I will ask you whether or not from your knowledge or observation in this parish whether or not those gentlemen did not offer very large rents in 1866 and 1867 for those lands?

A. They did.

Q. I will ask you whether or not there was at that time a great demand for plantations to be occupied by these Northern lessees?

A. There was.

244 Q. I will ask you whether or not, as the result of the experiment of these new comers in the production of cotton with free labor, if the result was not very disastrous?

A. Yes, sir; it was a complete failure.

Q. I will ask you if in many instances in 1867 there was not a complete *brake*-up among these people running out of the country with their stock and whether or not they were entirely bankrupt by their failures to make crops?

A. There was; steamboats was going up constantly loaded with mules carried away from the plantations. I saw them. I went out to the river and saw them.

Q. I will ask you whether you know of a single plantation that had this system of labor upon it in this country to produce a bale of cotton to the acre in 1866 and 1867, when the rents were so ficti-ously high?

A. No, sir; I don't know of one.

Q. I will ask you whether you know of a plantation in this parish that was cultivated to the extent of four or five or six hundred (400, 500, or 600) acres in cotton during those years 1866 and 1867; if so, what was the average yield per acre at that time?

A. From my own experience—Mr. Pilcher's place. I recollect now they told me six hundred and fifty (650) acres was planted
245 in cotton; as I stated yesterday, they gathered sixty-one (61) bales; the expenses of that plantation, I believe, was thirty thousand dollars ($30,000). Pilcher never told me and I never asked him; he told me it cost him five thousand dollars ($5,000) to get the labor on the place.

Q. Do you know of other like disastrous results on these plantations during the years 1866 and 1867?

A. I may say Wilton when Chambliss and Matt. Johnson cultivated it; I don't know that they cultivated all of it; I was on the place; he told me he had made seventy (70) bales of cotton; that was one of the places I know that they ran their mules off of; they took them out to the river and sent them off out of the way of the creditors.

Q. I will ask you, Mr. Ingram, while as a matter of truth as to your testimony here that these lands rented for from eight to ten ($8.00 to $10.00) an acre in 1866 and 1867, did they, as a matter of fact, yield any revenue to the people that cultivated them?

Ans. No; they did not.

Q. Was not the rentals that you refer-ed to in your testimony in Gay and Morgan case a mere sum that was promised by these lessees of these plantations during that period, and whether, as a matter of truth, they were unable to make their promises to pay these large sums out of their crops?

246 A. I stated yesterday that they all broke; there weren't a man in the parish that did not *brake;* very few were able to plant here in 1868; there was the "Concord" place; they were able to plant that; that was about the only place I know of.

Q. I will ask you, Mr. Ingram, if there were not many planters in 1868 that were unable to get advances or means with which to cultivate their plantations that year, owing to the losses of the previous by these Northern men that had attempted to run the plantations?

A. Yes, sir; they were hardly able to run their plantations; they only partially cultivated them.

Q. Mr. Ingram, you have *you* stated you lived in this parish about forty (40) years?

A. Yes, sir.

Q. I will ask you if you ever saw a gloomier or more depressed condition of affairs than was exhibited here during the year 1868 after the losses of 1866 and 1867?

A. No, sir; never.

Q. Did you ever see a community so thoroughly impoverished by these planting experiments with free labor than was the case here after the disasters of 1866 and 1867?

A. Never have.

Q. I will ask you, Mr. Ingram, if this depression was not so great that many of the old citizens were desirous of getting out of

247 the country if they could get means to start up somewhere else?

A. There was; yes, sir; that is so.

Q. I will ask you whether—after the disasters of 1866 and 1867—whether or not these Northern men that were engaged in these different planting experiments with free labor, whether or not they did not abandon the country, as a class?

A. They did.

Q. I will ask you to state if this system of renting lands for eighty

(80) pounds of lint cotton per acre to freedmen was not instituted here after these losses that you have mentioned—say about Jan'y, 1869 or 1870.

A. About 1869, I think, Judge Benham commenced it.

Q. About 1869, but more frequently afterwards?

A. Yes, sir.

Q. Well, now, what was the object in dividing up the plantations in these little sections and making them contracts with the freedmen; was it for the purpose of interesting them in the crop and thereby secure better labor?

A. The object was to make them share a part of the loss; some was worked on shares—that is, if no cotton was made they got nothing; some rented out land in that way.

248 Q. I will ask you whether this system of renting lands out to tenants prevailed in this parish prior to 1869, or whether it began after 1869?

A. It has been since 1869; before that I don't know more than one (1) or two (2).

Q. How were the plantations cultivated prior to 1869; was it by working the hands together or by working them in squads?

A. Working them altogether.

Q. What was the consequence of working them together and paying them wages; was the labor profitable?

A. The consequence was the proprietor failed.

Q. I will ask you, Mr. Ingram, whether the inflated prices of land and rents refer-ed to in your testimony in the Gay and Morgan was not owing to the fact that a great many Northern men came down here with money to go into planting speculations, and that plantations were in great demand, and that they hoped for great results; whether they kept their promises to pay these large rents or whether or not these promises were mere paper promises.

A. I stated several times they did not carry out their promises; they all failed.

Counsel for complainant objects to the testimony of this witness on cross-examination on the ground of irrelevancy, and that it is hearsay. Reserving these and all other legal objections coun-

249 sel for complainant propounds the following:

Redirect examination by Mr. SAUNDERS:

Q. Mr. Ingram, you have stated that Johnson and Chambliss cultivated the "Wilton" place.

A. Yes, sir.

Q. Is that the same "Wilton" place or is it a different "Wilton" place that you refer-ed to in your testimony in the Gay and Morgan case?

A. It is the same place.

Q. Do you know who cultivated the "Melbourne" place?

A. I do not.

Q. Do you know who cultivated the "Albion" place?

A. I do not.

Q. Do you know whether the persons who cultivated the "Melbourne" and "Albion" places were successful in planting or failed?
A. I do not.

Counsel for def't- objects to the evidence of this witness on redirect examination on the ground of irrelevancy, and also on the ground that it has no bearing upon the present controversy and is not responsive to any of the issues of this case.

By Mr. SAUNDERS:

Q. What did you state in your testimony in the case of Gay against Morgan to be the value of the "Wilton" place?
250 A. I stated that Judge Morgan would not have sold the land at all. In his time they could not have been bought I know for less. I know he was offered four hundred thousand dollars ($400,000) for the slaves and the property altogether; there were three hundred slaves on the place before the war.

To this question and answer counsel for def't- reserves the same objections on the ground of irrelevancy and incompetency, and that it is not responsive to any of the issues raised in the pleadings at the present time.

ISAM B. BEARD sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Beard, where do you reside and how long have you resided in this parish?
A. I reside in Carroll parish; I have been here fifty-seven (57) years.
Q. You reside in East or West Carroll?
A. East Carroll.
Q. Is your residence on the Mississippi river?
A. It is a mile from the river.
Q. How far do you live from Raleigh plantation?
A. Adjoining it.
251 Q. That is the plantation now occupied by Judge Wyly?
A. Yes, sir.
Q. In what occupation have you been engaged during your residence in this parish?
A. Planting.
Q. In cotton planting?
A. Cotton and corn.
Q. Are you familiar with the value of cotton lands on the Mississippi river?
A. Well, I should remark, though the prices have been very changeable, very fluctuating. If you ask about what time you want to know, some years it is much higher than others.
Q. About how much was ordinary cotton lands worth per acre in this parish in the year 1868?
A. I don't know of any being sold. We had our place appraised;

I think it was in 1868 or the fall of 1867; I am not sure which. Our place was appraised at fifteen dollars ($15.00) an acre. I have not seen the record for so long that I am not sure, but I think that was it.

Q. To what place are you refer-ing?

A. To the place I reside on.

Q. The place you are living on now?

A. Yes, sir.

Q. How many acres in that place?

252 A. At that time there were four hundred and thirteen (413) acres, I think.

Q. What was the rental value of cotton lands per acre on the Mississippi river in 1868?

A. Well, sir, I really don't know. I don't know what it was worth. I know Mr. Craig's place you spoke of—you refer to property in that immediate neighborhood?

Q. In that immediate neighborhood.

A. The levee was down that year. We was only protected by a little side levee. I think Mr. Craig cultivated a part of the Carondelet place, and paid a dollar ($1.00) rent nominally an acre, I think; that is my recollection.

Q. Do you know what was the customary rental of cotton lands per acre on the river in this parish at that time?

The WITNESS: Do you mean where it was protected by levees or unprotected?

Mr. SAUNDERS: Where it was protected?

A. As I have remarked, the levee was down on the "Salem" plantation, adjoining "Raleigh."

Q. What rental was paid for lands that were protected by levees?

A. From eight to ten dollars ($8.00 to $10.00) an acre, I think.

Q. At that time?

A. Yes, sir.

253 Q. Are you acquainted with the Raleigh plantation, on which Judge Wyly resides, and how long have you known it?

A. Well, I have known it for over a half a century.

Q. Is there a dwelling-house on that plantation?

A. Yes, sir.

Q. About how large is it?

A. Well, I really can't say. It is a house with four (4) rooms on each side, with a passage between.

Q. When was that dwelling-house erected?

A. Well, I can't say.

Q. About—was it built before the war?

A. I think it was.

—. Do you know what was the condition of the Raleigh plantation in the year 1868—Oct., 1868?

A. There was not much of it in cultivation, I don't think.

Q. How much cleared land was there on the plantation that year?

A. Well, it was nearly all cleared. Very little of it was not cleared; but it was not cultivated; I don't think much of it was; at least that is my recollection.

Q. Was it in a condition to be cultivated?

A. I remarked, you know, that the levee was down on the adjoining place above. There was some of it cultivated.

254 Q. What I wish to ascertain is, Was the place in a condition to be cultivated if the levee was rebuilt?

A. Oh, yes, sir.

Q. Do you remember the state of the fencing on the place that year?

A. I don't think there was any fencing, unless just a little on the front.

Q. Were plantations in this parish ordinarily fenced?

A. They were before the war; not since. I speak of our own section.

Q. What was the condition of the drainage on that plantation in 1868?

A. I don't think the ditches had been cleaned out since the war.

Q. Did the drainage or not answer for the purpose of cultivation?

A. A portion of it was—a large portion of it was; but there was a portion that was worthless—a very considerable portion that was worthless—without — drained or ditched.

Q. Do you remember whether there was a cotton gin on that place in 1868?

A. Yes, sir; there was.

Q. What sort of a gin was it?

A. Well, I don't know that I can describe it.

Q. Was it a good one?

A. Well, I think it was a fair gin. It was run by mule power—horse power.

Q. What were the out-buildings on that plantation in 1868?

255 A. Well, there were ordinary buildings—log cabins; a good many of them rotten, down.

Q. Was there any coca grass on the Raleigh plantation in 1868?

A. Well, if there was I did not know it.

Q. When was the levee rebuilt that you just now stated was down?

A. In the fall of 1868 or 1869—the winter of 1868 and 1869—I think so. Now I — make a mistake; not having my memory refreshed I can't recollect all of these particulars.

Q. Has that levee broken down since 1868?

A. It has caved off very bad; it has caved off in a good many places.

Q. Has the Raleigh plantation been overflowed since 1868 and up to this year?

A. No, sir; till this year.

Q. How much at the front of that place has caved off since 1868?

A. Well, sir, I should think there was over two hundred acres (200) cave- off altogether—perhaps three hundred (300). Of course this — guess-work, but there is a good deal caved off.

Q. Of the Raleigh plantation?

A. Yes, sir.

Q. Mr. Beard, is a dollar and a half ($1.50), in your judgment, a fair and correct valuation of the Raleigh plantation in 1868?

A. I would think not; I would not think so.

256 Q. What, in your opinion, was that plantation worth in 1868?

A. Well, I should think it was worth fifteen dollars ($15.00) an acre; that is what most of the lands in the country were appraised at.

Q. Mr. Beard, is the month of October a favorable time for selling in this parish large cotton plantations for cash?

A. Well, it would depend a good deal upon the financial condition of the country. It would, perhaps, have sold better if it had been delayed a month or two (2); but if the crops were good I don't know that people could have any particular objection to selling in October.

Q. Were you acquainted with the late Micheal Gingery, of this parish?

A. Well, I knew him; yes, sir.

Q. Where did he live?

A. He lived in what is called West Carroll now; at Floyd, I think he lived.

Q. How far from the river?

A. Well, if you go in a straight course I suppose it is twenty (20) miles; I suppose if you go by the road it is twenty-five (25).

Q. What was his occupation?

A. Well, I think he was a carpenter—sort of a mechanic; I am not right sure, but that is my impression.

Q. Did you ever know of his being the manager or owner of a cotton plantation?

257 A. I did not.

Q. Do you know whether he could read or write?

A. I do not. I understood he could not, but I don't know.

Q. Would you consider him to be a proper person to appraise a cotton plantation on the river to be sold under that appraisement at a succession sale?

A. Not unless he was acquainted with the place.

Q. Would you rely upon his valuation of a cotton plantation on the river?

A. Well, I hardly think I would.

Counsel for defendant- reserves all objections heretofore made to the taking of parole testimony in this case beyond the issues presented in the pleas and exceptions upon which it is now pending for trial. Counsel for def't- specially objects to each and all of the foregoing questions and answers, and by agreement with opposite counsel it is understood that the objections can be stated now to each and all the questions and answers of this witness. Defendants' counsel specially objects to the parole testimony in regard to the things inquired of in the foregoing interrogatories upon the ground that the same is irrelevent and is not responsive to any of the issues now pending for trial in this case.

Reserving the foregoing and all other legal objections to the
258 competency and admissibility of the depositions of this witness, defendants' counsel propounds the following cross-interrogatories:

By counsel for def't-:

Q. Mr. Beard, you have stated you have known Raleigh plantation for many years?

A. Yes, sir.

Q. And that *is* has a bad caving front?

A. Very bad.

Q. Now, will you please state about the number of acres in the original tract?

A. I believe there was about sixteen hundred and eighty (1,680) acres in the tract.

Q. Now, I will ask you, Mr. Beard, about how many acres are there now in the tract as well as you can remember from looking at the place.

A. I don't think inside the levee there is more than twelve hundred (1,200) acres.

Q. What has become of the other portion of the tract?

A. Caved in the river, and the levee turned out considerably, so that it now embraces about one thousand (1,000) acres, in my opinion.

Q. I will ask you, Mr. Beard, if the rents—the rents of these lands — were not very high in 1866 and 1867.

A. They were; all lands on the river were high.

Q. All lands on the river were high?

259 A. All cleared lands.

Q. What were they rented at during that period—1866 and 1867?

A. Well, in 1866, generally, lands could have been rented for from fifteen to twenty-five dollars ($15 to $25) an acre. I don't know but one that rented for twenty-five dollars ($25).

Q. Now, I will ask you, Mr. Beard, what was the cause of that inflated prices of rent of lands during that period.

A. There was a great many men came here from the North to go into a big speculation of raising cotton with free labor.

Q. Now, I will ask you, Mr. Beard, if good plantations were not very much in demand at that time, owing to this influx of Northern capitalists, who came here for the purpose of trying to raise cotton with free labor

A. They were.

Q. Now, Mr. Beard, was not these large rents owing to this speculative disposition of these people to enter into the planting business?

A. Yes, sir; that is my judgment.

Q. How long did these inflated prices continue; how long did these men seek for these lands at these prices after the war?

A. To the winding up of 1867. They left the country—nearly all of them left the country. There was a few remained, but nearly all left.

260 Q. Now, Mr. Beard, what was the results of these planting experiments by these Northern capitalists in 1866 and 1867; was it profitable or disastrous to them?

A. It was disastrous; every one lost money.

Q. Were these Northern capitalists pretty much broken up by their experiment of raising cotton with free labor?

A. I should think so; they got away from here.

Q. I will ask you if the old citizens that had invested almost their last dollar in this experiment—if they were not very badly crippled in their financial affairs thereby.

A. So far as I know, they were.

Q. I will ask you if they did not lose money by this experiment themselves.

A. Yes, sir; I did.

Q. I will ask you how these negroes were worked in 1866 and 1867 on these plantations; were they devided, worked in squads, or worked together.

A. They were worked in gangs.

Q. For wages, I suppose?

A. So far as I know.

Q. Mr. Beard, I will ask you whether the "Raleigh plantation," or whether any plantation in that vicinity, from your personal knowledge and observation and experience, yielded any revenue—any net revenue—beyond their enormous expenses during 1866 and 1867.

261 A. No, sir; I think not a cent. I have no idea they made expenses.

Q. How was the negro as a laborer during that period; was he thrifty, industrious, or trifling and unreliable?

A. Yes, sir; in 1866 they worked finely. Of course, I am speaking of my own labor.

Q. What was the cause, then, of all this break-up, these disasters, from your observation in the country, when this revulsion took place in 1868; what was the cause of it?

A. Well, a great many was planting on borrowed capital; they paid enormous wages, and the cotton worm eat the cotton—destroyed it.

Q. Did I understand you to say there were great failures of the crops in 1866 and 1867?

A. So far as I know, it was almost an entire failure.

Q. How many acres, from your observation, would it take to produce a bale of cotton during that period?

A. That is a question that I have never thought about. I don't think I made a bale to five or six (5 or 6) acres—that is, it would take five or six (5 or 6) acres to make one bale.

Q. That is what you know of your own knowledge?

A. I am only speaking of what I know.

262 Q. Now, I will ask you if there was not almost a complete disaster to the cotton crop during that period.

A. Yes, sir.

Q. I will ask you if there was not almost a complete disaster to the planting interests in the parish during that period.

A. Yes, sir; such as I hope never to see again.

Q. Did I understand you to say in 1868 the levee was down?

A. Yes, sir.

Q. Affecting the "Raleigh" plantation that year?

A. It affected my place; I suppose "Raleigh," too; a portion of Raleigh, I know, was affected. There was very little of Raleigh cultivated.

Q. How much of Raleigh plantation was cultivated in 1866 and 1867?

A. In 1866 it was pretty nearly all cultivated, a large portion of it.

Q. By whom, do you remember?

A. Pittman and Boyd.

Q. Do you know how many bales they produced on that plantation?

A. I do not; mighty little, I know.

Q. About how many bales do you suppose they made?

A. Well, I don't know; they made very little.

Q. Do you suppose they made a hundred (100) bales?

A. I don't know whether they made a hundred (100) bales or not. I know they did not clear expenses.

263 Q. Was the result on the Raleigh plantation equally disastrous in 1867 as it was in 1866 by the failure of the crops?

WITNESS:

A. You say in 1867?

COUNSEL FOR DEF'T-: Yes, sir.

A. I don't think it was in cultivation hardly at all in 1867.

Q. Was it overflowed in 1867?

A. It was overflowed; the levee was down at Hawes Harris' and backed up on the place.

Q. And as a consequence, of course, very little of Raleigh was in cultivation in 1867?

A. Very little.

Q. I will ask you about how much of the place was cultivated in 1868—approximately; how much do you suppose?

A. Well, there could not have been more than two hundred (200) acres of it in 1868; I don't recollect very well.

Q. Well, now, Mr. Beard, I will ask you, from your experience and observation, whether these disastrous failures of the crops in 1866 and 1867 did not produce a great gloom and depression in this country?

A. Most undoubtedly it did.

Q. I will ask you whether there was as great a demand for planting lands in 1868 as there was in 1866 and 1867?

A. No, sir; I say no; not that I know of.

264 Q. I will ask you if there was not great difficulty experienced by the old citizens that remained here to make their financial arrangements to cultivate these lands in 1868 after the failures of 1866 and 1867?

A. I am sure there was.

Q. I will ask you if it was not almost impossible to make financial arrangements in 1861 in view of these disasters to the crop in 1866 & 1867—arrangements for planting, I mean, after the losses of 1866 and 1867?

A. I am sure it was almost impossible.

Q. I will ask you whether, owing to these disasters of 1866 and 1867, there was not a great deal of land left out of cultivation in 1868?

A. There was.

Q. I will ask you, Mr. Beard, if there was not great distress among the people and property holders on account of the depressed condition of affairs in 1868?

A. Of course, in speaking of the people, I only know a very sma' part of them, but there certainly was distress.

Q. Could this "Salem" plantation or the "Raleigh" plantation or any plantation in that neighborhood have rented in 1868 at the fabulous rents they commanded in 1866 and 1867?

A. I doubt if they could have been rented at all.

265 Q. Mr. Beard, you have stated that you estimated the land in 1868 at about fifteen dollars ($15) an acre—these lands; I will ask you whether from the condition of the country—the financial condition of the county—they could have been sold on the market at that price for cash?

A. I think not.

Q. I will ask you whether in 1868 there were any land buyers in the country or any people of capital seeking to invest in lands within your own knowledge?

A. There was not; I don't know of any of my own knowledge.

Q. Do you think it was possible at that time to have sold a cotton plantation for that sum, you suppose at its value, by offering it at public auction, in view of the distress and financial condition of the country then prevailing?

A. I should think not—I mean in that neighborhood; I don't know what it was in other sections.

Q. Mr. Beard, the Raleigh plantation sold for twenty-five hundred and thirty-three dollars and some cents ($2,533.00) on the 20th of Oct., 1868, at public auction for cash; do you think it could have been sold at public auction for cash on that day at any higher rate than it did sell for?

A. I don't know; I think it is worth a heap more; it is a question I hate to answer, for I have no idea at all.

Q. You don't know?

266 A. I really don't know.

Q. What I mean to say is, Were there people in the country with money prepared to buy, prepared to bid?

A. Right in my immediate neighborhood I don't believe people had any money to buy it in.

Q. I will ask you whether at that period it was possible to sell that place without a sacrifice, in view of the condition of the country?

A. Well, I guess not; I don't think it would have brought anything like its value.

Q. At a cash sale?

A. At a cash sale I don't think it would have brought its value.

Q. Do you think if that plantation had been sold, offered for sale,

during Oct., 1868, or at any period about that time, that it could have been sold for fifteen dollars ($15.00) an acre cash on the spot?

A. I hardly think it could.

Counsel for complainant objects to what the witness has stated on hearsay on the ground of inadmissibility.

Reserving this and all other legal objections, counsel for complainant propounds the following:

Redirect examination by Mr. SAUNDERS:

Q. Mr. Beard, had you been appointed appraiser to appraise the Raleigh plantation in Oct., 1868, at what sum would you have appraised it?

267 Ans. Well, I have already stated that I thought it was worth fifteen dollars an acre.

Q. Would you have valued it at that sum for the purposes of a probate sale?

A. I don't think I could have appraised it for any less. I don't mean to say by that that it would sell for that price, but I could not honestly have appraised it for less.

To this question and answer counsel for def't- reserves all legal objections to the competency and admissibility of this evidence, and he specially objects to the opinion and conjectures of this witness as not responsive to any of the issues of this case and as incompetent to be administered in court.

By counsel for def't-:

Q. I will ask you if you are not familiar with the Raleigh plantation—if you have not lived near the place nearly all your life?

A. Yes.

CHARLES R. EGELLY sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Egelly, are you a resident of this parish?

A. Yes, sir.

Q. When did you come here?

A. In November, 1865.

Q. How old were you then?

A. Let me see—I am 39 now—22 or 23.

268 Q. What was your occupation then?

The WITNESS: When I first came here?

Mr. SAUNDERS: Yes, sir.

A. Clerk.

Q. Where did you come from and what had been your previous occupation?

A. I came from New Orleans; I had been clerking in New Orleans.

Q. For whom were you clerking here?

A. Well, I clerked for H. Stein & Co. and D. L. Morgan & Co.

Q. How long did you continue as clerk after coming here?

A. From Nov., 1865, I think it was, until, I think, in January, 1868.

Q. In what business were you engaged in Oct., 1868?

A. I was merchandizing.

Q. Did you ever engage in planting or cultivating cotton?

A. Yes, sir; I think I did; I don't remember the year; I think it was in 1870, probably 1869—1870 or 1869.

Q. Up to Oct., 1868, you had not been engaged in planting?

A. No, sir; I did not know anything about the cotton business at all.

Q. Up to that time had you ever bought or sold any cotton lands on the Mississippi river?

A. No, sir.

269 Q. Had you leased or rented such lands?

The WITNESS: Up to 1868?

Mr. SAUNDERS: Up to 1868.

A. No, sir.

Q. Up to 1868?

A. No, sir.

Q. Were you in this parish on July 16th, 1868?

A. July 16th; I expect I was; yes, sir. I don't know positively. I suppose I was, though.

Q. Mr. Egelly did you apply to be appointed administrator of the succession of James Railey in place of Fred. W. Boyd?

A. Yes, sir.

Q. Did you request the attorneys, Mess. Sparrow and Montgomery, to have you appointed administrator of the said Raley's succession?

A. No, sir; I did not request them; they requested me; they asked me if I would accept the position of administrator.

Q. Who was it that asked you if you would accept the position of administrator of that succession?

A. I think, as near as I can remember, it was J. W. Montgomery.

Q. Tell me, as well as you can recollect now, what he said to you on that subject.

A. As near as I can remember, the only conversation I had with him was he asked me if I would take the position; I was in business at the time. I think, as near as I can remember, he asked me to represent the creditors. I don't remember now, it has been so long ago.

270 Counsel for deft- objects to the question and answers propounded to this witness and to this parole examination in reference to his appointment as administrator upon the ground that the record evidence is the best evidence; that these questions and answers are not responsive to any of the issues presented in the case. Counsel for deft- also reserves the same objection made to the testimony of other witnesses as to the competency and admissibility and relevency of the testimony of this witness.

Q. Did Judge Montgomery say to you what you would be expected to do as administrator?

A. I don't think he did; I don't remember that he did. He may have done so, but I don't remember it.

Q. Did he say anything to you in regard to the sale of the Raleigh plantation?

A. I don't remember; it is a very difficult matter for me to remember; I don't recollect. I was in business here at the time. My recollection is he requested me—asked me if— would accept it.

Q. Did you know personally either of the appraisers, Micheal Ginger or John W. Hays?

A. I knew them both slightly.

Q. Could the appraiser, Micheal Ginger, read or write?

A. That I don't remember.

271 Q. Who was security on your bond as administrator?

A. I think Judge Montgomery was, if I am not mistaken. I am not positive. The record, I suppose, would show that.

Q. Did you notice the amount of the appraisement of the Raleigh plantation at the time you were appointed administrator of the succession?

A. I think not; no, sir.

Q. Do you remember what that appraisement was?

The WITNESS: You mean at that time or the day of the sale?

Mr. SAUNDERS: Any time.

A. No, sir; I do not. I think it was in the neighborhood of twenty-five hundred dollars ($2,500)—I think it was.

Q. Did you consider that apprais-ment a correct and proper valuation of the Raleigh plantation?

A. That I am unable to say, because I did not know anything about the valuation of lands at that time.

Q. Do you remember on what day you were appointed administrator?

A. Let me see. It was in 1868. The papers would show that, I suppose. I was in Sept.—some time in September—1868.

Q. Now, Mr. Egelly, before your appointment and qualification as administrator of the succession of James Raley, did you investigate the condition of that succession as to its debts and liability?

272 A. No, sir; I did not.

Q. Before your appointment as administrator of that succession did you correspond with any of the creditors of that succession?

A. No, sir; I did not. I had nothing to do with the matter. I don't know whether I did it or not. I don't remember corresponding with them.

Q. Did you, before or after your appointment as administrator of the succession of James Raley, correspond with your predecessor in the administration of that succession, Fred. W. Boyd, in order to ascertain from him what were the debts and means of that succession?

A. I don't remember that I did. Judge Montgomery may have done so.

Q. I am asking you if you did it.

A. No, sir. I don't remember that I did.

Q. Mr. Egelly, on the day after you were appointed and qualified as administrator of the Raley succession, you filed a petition in which

you allege that August Belmont was a judgment creditor of that succession for over fifteen thousand dollars ($15,000). Had Belmont written to you about that claim?

A. Not to me; no, sir.

Q. Had you written to Belmont about that claim?

A. No, sir; not that I remember.

Q. Had Belmont ever demanded payment of that claim from you?

273 A. No, sir; not that I remember.

Q. In the same petition you alleged that A. and N. Heins were creditors of that succession for a large sum; had they written to you about their claim?

A. I don't think they did. I will state right here, so as to shorten this thing, that I had nothing to do with it. The attorney, J. W. Montgomery, conducted all the succession matters.

Q. How, then, did you know that the succession owed any debts at all?

A. From what Judge Montgomery told me, there were judgments against the succession; I think he told me they were of record.

Q. Did you know certainly that these debts had had not been paid by your predecessor in the administration of that succession?

A. No, sir.

Q. Do you know whether he had appointed a time for payment of them?

A. No, sir.

Q. Did you examine the record and papers of the succession to ascertain what had been done prior to your as administrator?

A. I did not; no, sir.

Q. Who wrote the petition, which you signed, praying for an order of court authorizing you to sell the property of the succession in order to pay the debts?

A. I don't remmember who wrote the petition; the paper ought to show that itself.

Q. Who gave you that petition?

274 A. I don't know; I suppose Judge Montgomery, probably.

Q. Was it at his instance you applied for an order of court authorizing you to sell property?

A. I think it was, as near as I can remember.

Q. Did you regard this as acting for the benefit of the creditors of that succession?

A. That is, I so understood it.

Q. Did you correspond with any of the creditors of the succession?

A. Not that I remember; no, sir.

Q. Did you receive instructions or inquiries from any of the creditors while you were administrator of the succession?

A. Probably Judge Montgomery instructed me in regard to some of the creditors.

Q. I ask you, if you yourself personally received any instructions or inquiries from any of the creditors of the succession?

A. I don't think I did; no sir; I don't remember having done so.

Q. Did you attempt to discover any other assets of the succession besides the Raleigh plantation?

A. No, sir.

Q. Did you correspond with any of the heirs of the succession of James Raley since you were administrator?

A. Not that I remember; I may have done so, but I don't remember it.

Q. Did you request any of those heirs to furnish you with the means to pay the debts of that succession?

275 A. I don't remember that I did.

Q. Did you inquire of those heirs whether the debts were still due or whether they were paid?

A. No, sir; I don't remember having — correspondence whatever on the subject.

Q. Did you ever notify any of the heirs of your intention to apply for an order to be authorized to sell the property of that succession in order to pay the debts?

A. No, sir; not that I remember.

Q. In your administration of this succession I understand from your answers you simply lent your name to Judge Montgomery to be used as administrator.

A. He requested me to act as administrator of the succession and told me I would represent the creditors or some of the creditors, I don't remember which, it has been so long ago.

Q. Of your own knowledge you knew nothing of the condition of the succession?

A. No, sir; not of my own personal knowledge.

Q. Of your own personal knowledge you knew nothing of the propriety or necessity of your application for an order to sell the property of that succession?

A. No, sir; not of my own personal knowledge.

Q. You relied wholly and implicitly on what your attorneys told you?

A. Yes, sir; I was guided by what they said entirely.

276 Q. Of your own knowledge did you know anything of the value of the property of that succession?

A. No, sir; nothing at all.

Q. Did Judge Montgomery say anything to you about the sale when it had been made?

The WITNESS: At the time of the sale?

Mr. SAUNDERS: Yes, sir.

A. I don't think he did—that is, I don't remember that he did.

Q. Did you at that time consider the price obtained for that plantation fair and adequate?

A. Well, as I answered before, I knew nothing at that time as to the value of cotton plantations. I relied on the apprais-ment that had been made.

Q. Did you know the appraiser, Micheal Gingery, personally subsequent to that time?

A. I think I knew him slightly in 1868.

Q. Do you know whether he could read or write?

A. I think he could write, but very indistinctly. As near as I can remember, I think I have seen him write his name. I think I have seen his signature, but it was very indistinct.

Q. Could you recognize his signature if I should show it to you?

A. I don't know. I suppose I could. I never had sufficient transaction with the man to be able to recognize his signature.

NOTE.—Defendant's counsel, under the agreement with opposite counsel, has postponed making his objection to the interrogato-
277 ries and answers of this witness heretofore made with the understanding that he has the right now to enter his objections to each and every one of the questions and answers of this witness, and he objects to them upon the ground that the evidence sought to be elicited from this witness in reference to his appointment as administrator and other matters detailed by him are not the best evidence of the facts sought to be elicited; that the mortuary papers showing the appointment of this witness as administrator are the best evidence of those facts in reference to the appointment of this witness as administrator; that the remarks alleged to have occur-ed between this witness and J. W. Montgomery about the time of his appointment are conversations to which the defendant, W. G. Wyly, the purchaser of the property, was not a party; that he had no knowledge at the time the property was adjudicated to him touching any of the matters enquired of this witness; that def'ts' rights cannot be jeopardized by conversations with parties prior to the appointment of this administrator; that he is not affected by irregularities antecedent to the order of sale, being a third (3rd) person purchasing in good faith. Counsel for def't- further objects that the questions are irrelevant and the answers merely conjectures and opinions of this witness as to matters and things that occur-ed about fourteen (14) years ago, and with which the def't, W. G. Wyly,
278 is in no manner connected; that all the parole statements of this witness are inadmissible under the issues now presented for trial in this case.

Reserving the benefit of the foregoing objections and all other legal objections to the competency and admissibility of the foregoing testimony, counsel for defendant- propounds the following:

Cross-interrogatories by counsel for def't-:

Q. Who were the attorneys of the succession while you were administrator?

A. My recollection is Sparrow & Montgomery.

Q. They were employed as attorneys by the succession?

A. Yes, sir.

Q. And you consulted them as your attorneys?

A. Yes, sir.

Q. Well, I will ask you if you were not guided by the advice your attorneys gave you in reference to the indebtedness of the estate and the necessity of selling the property to pay the debts?

A. Entirely so; I was guided by them entirely in the whole transaction.

Q. Did you not understand that there was a large amount of judgments against this estate at the time you were appointed administrator?

A. Yes, sir.

Q. Can you give an idea how much they aggregated at the time you filed your application?

279 A. No, sir; I cannot.

Q. I will ask you to look at the certified copy of the administration of the succession of James Raley by the witness Chas. R. Egelly as administrator, and ask you what you discover thereon (handing witness document refer-ed to)?

A. Witness, after examining the document referred to, says: I discover on the tableau forty-six thousand dollars ($46,000) of judgments against the estate (referring to the petition and order of sale of the property on pages 10 and 11).

Q. That is exclusive of interest?

A. Yes, sir; exclusive of interest.

Q. Was the amount of debts presented in the statement of debts at the time of the application for the sale of the property by you?

A. I discover in the petition and order of sale of the property on pages 10 (ten) and 11 (eleven) that the claim and judgments against the estate amounted to the sum of forty-six thousand dollars ($46,000).

Q. Was this inclusive or exclusive of interest?

A. I think exclusive of interest.

Q. I will ask you whether the document that you have in your hand now is a copy of the record of your administration of the succession of *the succession of* James Raley?

A. I judge it is from the certificate of the deputy clerk of court.

280 Counsel for def't- offers in evidence document referred to. Filed and marked Exhibit "A."

Counsel for complainant objects to that part of the document contained on page 4 of the document just offered in evidence by counsel for def't-, being considered a part of record of the succession of James Raley, as it does not appear that said document which appears on page 4 of the copy filed and marked Exhibit "A," which states in the margin to be the opposition of Fred. W. Boyd, was ever filed.

And counsel for complainant avers that no such document ever was filed in the record of the succession of James Raley.

By counsel for def't-:

Q. I will ask you, Mr. Egelly, whether you have ever acted as administrator of any other succession besides that of James Raley in this parish?

A. Yes, sir; I have, recently, for a small succession.

Q. I will ask you *you* whether there was anything peculiar in your being appointed administrator, and in your conduct as administrator, and if it is not the usual custom here for an administrator to be guided by his counsel in conducting the affairs of a succession?

A. I think it is customary for him to be guided by them entirely.

Q. Is it not customary for an administrator to be guided
281 by their advice as to what is necessary to be done in discharging the duties of an administrator?

A. It is; as I have stated, it is customary for an administrator to be guided by the advice of his counsel.

Q. Did you understand you were merely lending your name to Judge Montgomery when you were appointed administrator of that succession?

A. I understood I was to represent the creditors.

Q. You understood that the duties of an administrator were to represent the creditors and see that they were paid?

A. Yes, sir; Sparrow & Montgomery requested me to take the appointment; they asked me if I would take the appointment, and I told them I would.

Q. I will ask you, Mr. Egeliy, whether you had any consultation or conference with the def't, W. G. Wyly, in reference to this succession, in reference to your appointment as administrator, in reference to *to* the inventory, in reference to the sale of the property, or have you had any conversation with him upon the subject of your administration of the succession of James Raley?

A. No, sir.

Q. I will ask you where you resided at the time you were appointed administrator?

A. I resided here in Lake Providence.

Q. Where did W. G. Wyly reside?

282 A. As near as I can remember, I think he was living in Floyd; I think so at least.

Q. What distance is that from Lake Providence?

A. It is about 20 (twenty) miles, I think.

Q. Had you seen W. G. Wyly about the 16th of July or any time within two or three (2 or 3) months before you got your appointment?

A. I don't remember; I think I was very slightly acquainted with him in those days; I might have seen him, but I don't remember.

Q. I will ask you whether, in the spring of 1868, there was any water intervening between Floyd, the county site, and Lake Providence?

A. I believe there was, because it has overflowed every year since I have been here.

Q. Did W. G. Wyly col-ude with you for the purpose—confederate with you for the purpose—of affecting a fraudulent sale of the Raleigh plantation?

A. No, sir; he did not.

Q. Did you have any conversation with him in reference to that succession, or in reference to the sale of this property, or in reference to his purchase of the property?

A. No, sir; I did not know he was to be the purchaser of the property.

Q. Did you have any conversation whatever with him in reference to this succession of James Raley in reference to the inventory or sale of that property?

A. No, sir.

283 Q. Did you go out to Floyd to make the sale of the property on the 20th of Oct., 1868?

A. I did—that is, the day I suppose it was sold.

Q. When did you see W. G. Wyly there; was it when you were crying off the property, or when?

A. I believe the first time I saw him there was when I was crying off the property.

Q. Did you have any conversation with him prior to the sale, or any communication with him prior to the sale?

A. No, sir; not that I am aware of.

Q. Do I understand you to say, then, that when you went out to make this sale the first notice you took of W. G. Wyly he was a bidder at the crying off of the property?

A. Yes, sir; I may have seen him in town, but I had no conversation with him; but I don't remember even seeing him.

Q. Did you advise or consult with him in reference to taking the inventory, appointing the appraisers, or provoking a sale of the property, or did you have any conversation with him in reference to the matter until this litigation began?

A. No, sir.

Q. I understand you to say that you simply sold the property on the 20th of Oct., 1868, and that W. G. Wyly appeared *as* at the sale as a bidder, and the property was adjudicated to him?

A. Yes, sir; that is my recollection.

284 Q. Did you make any bargain or compromise with W. G. Wyly in reference to the sale of this property—the sale of the Raleigh plantation—or in reference to the affairs of the succession of James Raley?

A. I did not to my recollection.

Q. Have you ever had any conversation or communication with him upon the subject of the sale of the Raleigh plantation until this suit was instituted?

A. To the best of my recollection, no, sir; not that I remember.

Q. Mr. Egelly, it is charged that there was a confederation and collusion between W. G. Wyly, Charles R. Egelly, and Sparrow and Montgomery for the purpose of destituting Fred. W. Boyd as dative executor, for the purpose of getting up a base and corrupt appraisement of the property of the succession of James Raley, for the purpose of affecting an apparent transfer of the legal title of said property of the succession of James Raley to W. G. Wyly. I will ask you whether you have any knowledge of such corrupt combination or conspiracy?

A. There was none, as far as I know; none with me, at least.

Q. Was there any counselling or conferrence held between Sparrow and Montgomery, yourself, and W. G. Wyly in reference to the sale of the property, or in reference to any of the matters in-

285 volved in this litigation?

A. No, sir; none that I know of.

Q. Do you think if there had been you would have known it?

A. Certainly I would, if done in my presence.

By Mr. SAUNDERS:

Q. Mr. Egelly, will you tell me whether you selected Messrs. Sparrow & Montgomery or whether they selected you as administrator?

A. I would state they selected me as administrator. In reference to their being employed by the succession, I know nothing in regard to the matter, but suppose they were employed as the attorneys of the succession by the succession and the creditors; that is my recollection of it.

Q. Did you suggest the names of the appraisers?

A. No, sir; I did not.

By counsel for defendant-:

Q. I will ask you whether or not Sparrow & Montgomery did not apply to you to administer upon the estate and whether or not they were the attorneys representing a large number of the creditors of the succession?

A. They did apply to me; yes, sir.

Q. They applied to you to administer upon the estate?

A. Yes, sir.

Q. Didn't they represent, as attorneys, a large number of creditors of the succession?

A. They represented several creditors; they told me so at the time.

286 Q. Did you consult with them as attorneys in the conduct of the administration of this succession by yourself?

A. I don't remember exactly whether I did or not.

Q. Did you have any other attorneys than the firm of Sparrow & Montgomery to represent you during the time you administered on the estate?

A. No, sir.

Q. Were they your legal advisers in the matter?

A. Yes, sir; they attended to the whole matter.

Q. In regard to the appraisers, did you have any hand in selecting the appraisers?

A. I had nothing to do with the selection of the appraisers.

Q. I will ask you whether or not the apprais-ment was made prior to your appointment as administrator?

A. Yes, sir; as near as I can recollect.

Q. Do you know of any fraud or malpractice that was resorted to to effect this apprais-ment?

A. Not that I know of; I knew nothing at all of the appraisement.

Counsel for deft- objects to the competency and admissibility of the examination of this witness in chief to all the questions and answers of this witness upon the examination-in-chief upon the ground that said testimony is not admissible under the pleadings in this case, that it is wholly irrelevent; counsel also reserves the same objections heretofore made to the testimony of other witnesses as to the admissibility of the testimony of this witness.

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Dr. E. M. DEVINE sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Dr. Devine, what is your full name?
A. Ebenezer Minter Devine.
Q. Do you reside in this parish?
A. Yes, sir.
Q. How long have you resided in this parish?
A. I came here in 1857, sir.
Q. In what part of the parish do you reside?
A. About Goodrich's landing, in that neighborhood.
Q. How far is that from the Raleigh plantation occupied by Judge Wyly?
A. Two and a half (2½) miles or three (3) miles, sir.
Q. What has been your occupation?
A. I have been a practicing physician and planter.
Q. Do you own a plantation?
A. I do, sir.
Q. When did you acquire it?
A. I bought it in 1870.

Q. Had you engaged in cotton planting before 1870?
288 The WITNESS: Before '70?
Mr. SAUNDERS: Yes, sir.

A. Yes, sir.
Q. When did you first engage in cotton planting?
A. In 1866, in the bottom.
Q. Did you plant cotton from 1866 until 1870?
A. Yes, sir.
Q. Did you rent the lands on which you planted cotton?
A. I rented lands; yes, sir.
Q. What land was it you rented?
A. I rented one year on Col. Buckner's place.
Q. Where is that place?
A. The Melbourne plantation.
Q. How near is that plantation to the Raleigh plantation occupied by Judge Wyly?
A. I suppose three miles (3).
Q. What year was it you rented the land on the Melbourne plantation?
A. In 1866.
Q. Did you rent lands in 1867?
A. I rented the "Out Post" plantation, belonging to Ballard and Boyd.
Q. Where is the "Out Post" plantation?
A. Directly south of Goodrich's landing.
Q. Please state always how far these plantations are from "Raleigh" plantation?
A. I think it about three (3) miles.
Q. Well, what rent did you pay?
A. I think I paid two dollars and a half ($2.50) an acre that year.
Q. From whom did you rent your land in 1868?

289 A. I rented from Col. Buckner.

Q. On what plantation?

A. On the "Melbourne" plantation.

Q. What rent did you pay that year?

A. I was to have paid ten dollars an acre, but didn't pay it on account of the overflow.

Q. You mean you rented the land for ten ($10.00) an acre?

A. Yes, sir.

Q. Where did you rent lands in 1869?

A. At the Willows, Melbourn.

Q. Where is that?

A. It is just adjoining to Col. Buckner's, about four (4) miles from Judge Wyly's.

Q. What rent did you pay there?

A. I gave him one-third ($\frac{1}{3}$); there were three of us, and when we came to settle each one got a third ($\frac{1}{3}$).

Q. Doctor, what was the ordinary rental value of land per acre—fair cotton lands—on the Mississippi river in 1868?

The WITNESS: In 1868?

Mr. SAUNDERS: Yes, sir.

A. Well, there was so little land rented here at that time; there were some lands rented that were free from overflow or anything of that sort; some lands rented for money and some for a portion of the crop.

Q. Are you acquainted with the Raleigh plantation?

A. Yes, sir; I have been the physician on that place ever since I came here in 1857.

290 Q. Of what quality are the lands on that place?

A. Well, I think it averages as well as the balance of the land in the country.

Q. Is there any coca grass on the place?

A. I can't say as to that; I don't know that there is; there may be, but I don't know it to be a fact.

Q. Was there a dwelling-house on the place in 1868?

A. In 1868 I think there was, though it could scarcely be called a dwelling-house; it was a double log cabin.

Q. What was the condition of that plantation in 1868?

A. I don't think there was but little of it in cultivation in 1868.

Q. Is it not on the Mississippi river?

A. Yes, sir.

Q. What do you think was the rental value of that place in 1868?

A. I can't say, sir.

Q. How much did lands of a similar quality with those of Raleigh plantation rent for?

A. I think that similar lands rented for three dollars ($3.00) an acre; I know some lands that rented for ten dollars ($10.00) an acre, but I know lands, equally as good lands, that rented for two dollars and a half and three dollars ($2.50 and $3.00) an acre; then there were lands that rented for ten dollars ($10.00) an acre;

291 those lands were considered better lands; at least I considered them so; they were free from overflow.

Q. Now, Doctor, what do you think was the value of those lands at a sale?

The WITNESS: At what time, sir?

Mr. SAUNDERS: In 1868. I ask you what was the value of the Raleigh plantation per acre in 1868?

A. I think there was plenty—I can't say positively—at that particular place; there was plenty of land around there that could have been bought at five dollars ($5.00) an acre.

Q. How much did you pay for your own place?

A. It cost about six dollars ($6.00) an acre in cash.

Q. Would you consider a dollar and a half ($1.50) an acre a fair valuation for the lands of the Raleigh plantation in 1868?

A. Well, I don't know as I understand that; if you mean to ask me if a large body of land was to be sold for cash; the whole body sold for cash perhaps; do you mean that, sir?

Q. No; I want to know what was the actual value of the Raleigh plantation in 1868?

A. That would be a hard question for me to answer.

292 Q. What was its just value; in other words, had you been appointed to appraise the Raleigh plantation in 1868, at what sum per acre would you have appraised it?

A. I certainly would not have valued it over five or six dollars ($5.00 or $6.00) an acre at that time.

Q. Were you acquainted with the late Micheal Gingery, of this parish?

A. I have met him several times.

Q. Do you know whether he could read or write?

A. No, sir; I do not.

NOTE.—Defendant's counsel, under the agreement with opposite counsel, now makes objection to each and every one of the questions and answers of this witness; that his parole statements as to matters and things inquired of him are mere opinions and conjectures, and are wholly inadmissible under the issues now presented in this case for judicial action; that the def't- in this — cannot be prejudiced by the opinions and conjectures of other statements of this witness because the same is irrelevent and not responsive to the issues of the case; the matters and things testified to are *res inter alios acta;* that the opinions and conjectures of this witness have no bearing upon any substan*ta*tial fact now at issue in this case;

293 therefore counsel for def't- specially objects to each of the foregoing interrogatories of this witness as well as the answers.

Reserving these and all other legal objections to the competency and admissibility of the testimony of this witness, def'ts' counsel propounds the following cross-interrogatories:

By counsel for def't-:

Q. I will ask you, Dr. Devine, if there was not in the early part of 1866 a great influx of Northern capitalists, who came to rent or buy lands and go into planting speculations?

A. There was, sir.

Q. I will ask you if the inquiry for farming lands by these capitalists was not so great in 1866 that the price of lands and rent went up to a fabulous rate?

A. In some localities it was.

Q. I will ask you what was the result of these planting experiments of these Northern men with the crops of 1866 and 1867? Was it disastrous or profitable?

A. Generally disastrous, sir.

Q. I will ask you if nearly all of them did not get broken up and leave the country?

A. They did.

Q. I will ask you if — have seen such a gloomy outlook in the financial affairs of this parish as there was in 1866 and 1867, owing to the disasters before mentioned?

294 A. No, sir; I don't think I ever did, unless it was the present year.

Q. I will ask you if the people, the old citizens, who entered into this planting speculation also in 1866 and 1867 were not pretty thoroughly broken up?

A. The majority, I think, were so.

Q. I will ask you if it was not almost impossible under the circumstances to borrow money to continue planting on these large places, owing to the disasters of the previous years?

A. Well, I can't say; I cannot answer that question.

Q. I will ask you if this plantation, the "Raleigh" plantation, was not exposed to overflow by the levee being down in 1867 and 1868 and from the Hawes, Harris, and Savage levees?

A. I don't think it was entirely overflowed in 1867, but I think the majority of the land was damaged from the overflow.

Q. I will ask you whether the land was exposed to overflow in 1868 from the Hawes, Harris, and Savage crevasses?

A. I think it was, sir.

Q. I will ask you, in consequence, how much of the land was cultivated in 1868, as far as you could judge?

A. A very small portion of it; I cannot say positively as to the number of acres, but it was small; the crop made there that year was small.

295 Q. I will ask you, Dr., whether, owing to the disorders of the previous years, it was possible in Oct., 1868, to have sold that place for cash at a public auction sale at a high price?

A. Well, now, the question might arise, What would be a high price? What do you consider to be a high price?

Q. Well, the place sold on the 20th of Oct., 1868, for twenty-five hundred and thirty-three dollars ($2,533.00) at a public auction for cash; do you think it could have been sold at public auction if put upon the market for any higher price?

The WITNESS:

A. At the time it was sold?

COUNSEL FOR DEF'T-: Yes, sir.

A. Yes, sir; I believe it could.
Q. Were there any land buyers in the country at that time?
A. Yes, sir.
Q. Were there any lands sold at a higher rate?
A. I don't know that there was.
Q. Have you ever seen the condition of the parish, the financial condition, worse than it was after these disasters of 1866 and 1867?
A. I don't think I did, unless it was the present year.
Q. What is the cause of the disasters this year?
A. The overflow.

296 And neither party offering and being ready to examine any other witnesses this day, I adjourned the examination herein ordered, in the presence of all parties, until Wed., July 19th, 1882, at the same place.

(Signed) J. B. BEATTIE,
Special Examiner.

Third Day's Proceedings.

WED., *July 19th*, 1882.

Mrs. ANN E. NEWMAN sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mrs. Newman, what is your age and where do you reside?
A. I am sixty-four (64), sir; I reside in Carroll parish on a plantation at Willow Point.
Q. On the Mississippi?
A. Yes, sir; immediately on the river.
Q. How far is your residence from "Raleigh," the present residence of Judge Wm. G. Wyly?
A. I imagine it is about three (3) miles.
Q. How long have you resided in this parish?
A. Thirty-two (32) years.
Q. Do you work the plantation on which you reside?
A. Yes, sir.

297 Q. Mrs. Newman, do you remember what rentals were obtained for Mississippi river cotton plantations in the year 1868 in this parish?
A. No, sir; we were not renting for money then; we were renting for a fourth (¼) of the proceeds of the place.
Q. Do you remember what was the price per acre for ordinary cotton lands that year?
The WITNESS: Do you mean for rent or for valuation?
Mr. SAUNDERS: For valuation.
A. No, sir; I don't; I can't say that there was any particular valuation—that is, I knew of no sales at that particular time.
Q. Are you acquainted with the "Raleigh" plantation?
A. Yes, sir; I have passed through it.
Q. Mrs. Newman, did you know of the sale of the Raleigh plantation to Judge Wyly, in 1868?

A. Not until it was consum-ated.

Counsel for def't- makes the same objections heretofore urged as to the admissibility and competency of the parole testimony of this witness; that the same is not responsive to any of the issues now pending and involved in this controversy; that this case is pending for trial on the exceptions and pleas to the jurisdiction of the
298 court; that the interest of pl'f to bring a suit on the pleas of prescription are *res adjudicata*, consequently def'ts' counsel protests against this effort to lug into this case, which can only be tried upon documentary evidence, a vast volume of parole statements of witnesses, who give only opinions and conjectures, as to the value of this piece of property, or that piece of property, or as to what was done or said by any one in 1868, or previously. Counsel for def't- protests that on the trial of a legal case it is utterly incompetent for counsel for complainant to enter into a grand inquest and inquiry into the affairs and business of various citizens of the parish at different periods, none of which matters and things are or could be received in evidence on the trial of the pleas and exceptions on which the case is now pending; that all of these matters sought to be enquired of are wholly irrelevant and inadmissible and are matters that are *res inter alios acta* and can have no bearing whatever upon the issues of the case. Reserving the benefit of these and all other legal objections to the admissibility and competency of each and all the answers of this witness, counsel for def't- now makes his former objection applicable to all witnesses and their evidence.

By Mr. SAUNDERS:

Q. Did you know of the intended sale of that plantation in 1868?

299 A. No, sir; I did not.

Q. Did you or — husband have any intention or desire to purchase that place?

A. I did not, and I don't remember that my husband had.

Q. Were you acquainted with the late Micheal Gingery?

A. No, sir.

No cross-examination.

GEORGE FOSTER sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. What is your age, where do you reside, and, also, what is your occupation?

A. I am fifty-two (52) years of age. I reside in East Carroll parish, on "Pecan Grove" plantation, on the Mississippi river. I am a planter.

Q. How long have you resided on that plantation, and how long have you been engaged in the business of cotton planting?

A. I have lived on that plantation ten (10) years, and I have been engaged during that time in cultivating it.

Q. Were you engaged in the business of cotton planting prior to your residence on that plantation?

A. No, sir.

Q. What was your business?

300 A. I was a merchant; resided in New York.

Q. Did you first come into this parish in 1872?

A. Yes, sir.

Q. Had you never been *been* in this parish previous to 1872?

A. I had been here, but not to reside.

Q. When were you here, and how long did you stay?

A. I think my first visit to the neighborhood was in 1867. I was only here on a visit. I did not spend any time here scarcely. It was a business visit. I was here occasionally from that time until I removed here.

Q. Did you know anything of the sale of the Raleigh plantation to Judge Wyly?

A. No, sir; I knew nothing of it. I knew he was the owner of the plantation; I had understood he was. I understood he bought it, but how he bought and when he bought I did not know anything about that.

Q. Were you acquainted with the late Micheal Gingery, of this parish?

A. No, sir.

Q. Is the month of October considered a favorable time in this parish for selling large cotton plantations for cash?

A. Well, sir, I would consider that as favorable time as any, from the fact that if the people have not got money at that time that they would have great facilities for getting it; more so, perhaps,

301 than at any other season of the year. If they have a prospect for a good crop it would be but a short time before they could realize on it; therefore I think money would be more plentiful at that season of the year.

Counsel for defendant- urges the same objections heretofore made as to the admissibility and competency of the testimony of this witness.

No cross-examination.

DAVID MUIR sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Muir, what is your age?

A. Thirty-one (31).

Q. You reside in this parish?

A. Yes, sir.

Q. How long have you resided here?

A. Since 1869—the fall of 1869.

Q. Do you own a plantation in this parish?

A. Yes, sir.

Q. Where is that plantation situated?

A. About twenty (20) miles below Goodrich's.

Q. How far is — from "Raleigh" plantation, the present residence of Judge Wyly?

A. About half (½) a mile, I suppose.

Q. How many acres does your plantation contain?

A. Something over three hundred (300) acres, I believe.

302 Q. When did you purchase it?

A. In 1872.

Q. How much did you pay for it?

Counsel for def't- objects to the testimony of this witness on the ground of irrelevancy and inadmissibility; that the same is not responsive to *to* any of the issues presented in the case which is now on trial.

A. I think the place cost about twelve thousand dollars ($12,000). It was bought on time.

Q. What was the general value of cotton lands in this parish — 1869?

A. Well, I suppose from fifteen to twenty dollars ($15 to $20) an acre.

Q. About how much an acre did cotton lands on the Mississippi river in this parish rent for in 1869?

A. Indeed I don't know. I only came here in 1869.

Q. Were you acquainted with Micheal Gingery?

A. No, sir.

Q. What was your business when you first came to this parish?

A. Mechanic.

Counsel for def't- reserving all legal objections—all the objections made to the admissibility of the evidence of the witness, Mrs. Newman, and all other objections made to the admissibility of the evidence of the other witnesses that have been examined in this

303 case, and specially reserving objections to the competency and admissibility of the statements of this witness, they being merely his opinions and conjectures—said counsel propounds the following cross-interrogatories:

By counsel for def't-:

Q. Did I understand you to say, Mr. Muir, that you came to this parish in 1869?

A. Yes, sir; in the fall of 1869.

Q. Were you just from the old country?

A. Yes, sir; Scotland.

Q. Had you any experience as to the value of cotton lands or any experience in the production of cotton when you came here in 1869?

A. No, sir.

Q. Knew nothing about it?

A. No, sir.

Q. How old were you when you arrived?

A. Twenty (20).

Q. Do you consider you were competent to judge of the value of lands from your experience at that time?

A. Well, I don't know; not immediately after I rented; perhaps a few weeks after I rented; I suppose I had a pretty good idea of what lands were worth.

Q. I will ask you if you had any personal knowledge of the value of rents or of the purchase price of property in 1868 or previous?

A. No, sir.

304 Q. Were you here in 1868 when the sale of the Raleigh plantation took place?

A. No, sir.

Redirect examination by Mr. SAUNDERS:

Q. Mr. Muir, with what intentions did you come to this parish?

A. Well, I can't say that I had any particular intention when I landed here; I started from Pittsburgh and stopped here about a month or two (2); I then went to New Orleans and stopped there a few days.

JOSEPH A. CRAIG sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Craig, what is your age? Do you reside in this parish; and, if so, how long have you resided here?

A. I am forty (40) years old, and have lived in this parish at different times since 1855, including the period during the war. I have lived outside of the parish about twelve or fourteen (12 or 14) years during that time.

Q. Were you in this parish in 1866?

A. I was not living here then.

Q. When did you come here?

A. I came here in 1867 and left in August, 1868.

305 Q. What was your business while you were here?

A. Mechanic.

Q. Where was your residence then?

The WITNESS: In this parish?

Mr. SAUNDERS: Yes, sir.

A. At that time I lived on the Carondelet plantation, about half (½) a mile from "Raleigh."

Q. Is "Raleigh" Judge Wyly's place?

A. Yes, sir.

Q. What was the condition of the "Raleigh" in 1868?

A. There was very little of it in cultivation; a great part of it had grown up in weeds; I believe most of the houses that were left there before the war were still standing.

Q. Was there a gin on the place?

A. Yes, sir; a "mule-power" gin, I believe.

Q. Was the place overflowed in 1868?

A. Partly.

Q. What was the rental value of cotton lands on the Mississippi river in this parish in 1868?

A. I don't remember; I worked a piece of land on the "Caron_

delet" plantation in 1861, but I don't remember the rent I paid; I rented it from my father.

Q. What was the ordinary value of lands per acre if sold that year; I speak of cotton lands?

306 A. I knew of no lands being sold at that time except under sheriff's sale.

Q. Was the price of cotton lands greatly different that year from what it was the year previous or subsequent years? I refer to the rents.

A. No, sir; lands had rented the year before or two years before at ten and fifteen — ($10 and $15) an acre in that neighborhood.

Counsel for deft- objects to the testimony of this witness on the ground of irrelevency and inadmissibility, and that the same is not responsive to any of the issues now pending in the case.

By Mr. SAUNDERS: Were you acquainted with the late Micheal Gingery, of this parish?

A. No, sir.

Q. Has the Raleigh plantation been overflowed since 1868?

A. Not until the present year.

Q. What is the quality of the lands of the Raleigh plantation?

A. Very good; considered as fine cotton lands as any on the river.

Q. Is there any "coca grass" on that place?

A. I never saw any until after the overflow of *of* 1868?

Q. How much of the Raleigh plantation was overflowed in 1868?

A. I should judge about three hundred (300) acres.

Q. How long did that overflow continue?

A. Till about the 1st to the 7th of June.

Q. When was the levee in front of that place rebuilt?

307 A. I think they were working on it in the fall of 1868. Mr. Noland was there when I left. He was the levee contractor.

Q. You left when?

A. In August, 1868.

Counsel for defendant- reserves all legal objections to the competency and relevancy of the testimony of this witness.

Cross-examination by counsel for deft-:

Q. Mr. Craig, I would like you to refresh your memory as to when that levee was put up. Are you positive the work was let out when you left here in Aug., 1868?

A. Well, I am not positive I said that.

Q. I will ask you if the "Hawes Harris" levee was not still open in 1868?

A. It was.

Q. In Oct., 1868?

A. I don't know about Oct.

Q. When you went away in August?

A. It was.

Q. Was not the "Raleigh" plantation when you left here in 1868 subject to overflow from the break at "Salem" and at the "Harris" place?

A. It was exposed to the break at "Salem," but the break at the Harris place did not effect it.

308 WILLIAM CRAIG sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Craig, what is your age? Do you reside in this parish; if so, how long have you resided here?

A. Sixty-six (66) years old. I come to this parish in 1855.

Q. What has been your occupation since you have been here?

A. Planter and manager.

Q. Do you own any lands in this parish?

A. Yes, sir.

Q. Where are they situated?

A. About twenty (20) miles below here, half (½) a mile back from the Mississippi river.

Q. How far are they from Raleigh plantation, belonging to Judge Wyly?

A. Adjoining, sir.

Q. Have you been in this parish since the war?

A. Yes, sir.

Q. What was your occupation during the years 1866, 1867, and 1868?

A. In 1866 & 1867 managing a plantation; in 1868 planting.

Q. What place did you manage during the years 1866 and 1867?

A. The place known as the "Carondelet" plantation.

309 Q. How far is that plantation to Raleigh plantation?

A. It is devided by half (½) a mile.

Q. Who owned the "Carondelet" plantation when you were manager of it?

A. I believe J. Mallen Davis; it was leased; Mallen Davis did not work it.

Q. To whom was it leased?

A. Hoyt, Sprague & Co. were the principals. I managed under an agent of theirs—D. B. Statts.

Q. Did you rent out any portion of the Carondelet plantation?

The WITNESS: When?

Mr. SAUNDERS: In 1866 and 1867.

A. No, sir.

Q. When did you purchase the place you now own, sir?

A. In the spring of 1868.

Q. How many acres does it contain?

A. One hundred and seventeen (117).

Q. How much did you pay for it?

A. Well, I took it for a three-thousand-dollar ($3,000) debt.

Q. Mr. Craig, what was the ordinary rental of cotton lands on the Mississippi river in 1868, in this parish?

A. In that neighborhood very little rented; the levees were down and the country pretty much abandoned; rentals generally paid a share of the crop.

310 Q. What was the value of cotton lands in the parish if sold at a cash sale—I refer to lands on the Mississippi river?

A. I can't say; at that time there was no money to buy with.

Q. What would you consider ordinarily was the value of cotton lands in this parish on the Mississippi river?

A. I suppose twenty dollars ($20) an acre.

Q. Are you acquainted with the Raleigh plantation?

A. Yes, sir.

Q. How long have you known it?

A. I have known it since 1855.

Q. What is the quality of the lands of that plantation?

A. As good average lands as most of it on the river bank.

Q. Was there any "coca grass" on that plantation in 1868?

A. I did not see none in 1868; there was not much "coca" that year; there were small patches of it in the neighborhood.

Q. Mr. Craig, do you consider the sum of one dollar and a half ($1.50) an acre to have been a fair price for the Raleigh plantation in 1868?

A. Well, there was no persons to buy; I suppose it was all it would bring, but I certainly do not consider that anything the value of it.

Q. At what sum per acre would you have appraised that plantation in 1868?

311 A. I would not have appraised it at less than fifteen or twenty dollars ($15.00 or $20.00) an acre, I think.

Q. Would you have considered it proper to have offered that plantation for sale at an apprais-ment of a dollar and a half ($1.50) an acre?

A. That I can't say; I can't answer. The property at that time was in a dangerous condition as regards the levees. The adjoining levee was down. There was no other levee for some distance.

Q. Has the place been overflowed since 1868?

A. Not till this year.

Q. When was the levee that was down in 1868 rebuilt?

A. I think it was finished in the early part of 1869. They began work in 1868.

Q. Were you acquainted with the late Micheal Gingery, of this parish?

A. I have been to his house a number of times.

Q. Could he read or write?

A. I cannot say, sir.

Counsel for def't- objects to the testimony of this witness on the ground of in-dmissibility and irrelevency.

Reserving the benefit of these and all other legal objections, he propounds the following cross-interrogatories:

312 By counsel for def't-:

Q. Mr. Craig, I will ask you whether or not there is a bad caving front of the Raleigh plantation?

A. There was.

Q. About how many acres have caved off of that place, probably?

The WITNESS: From 1868?

COUNSEL FOR DEF'T-: Yes, sir; since 1868.

A. I suppose at least one hundred (100) acres.

Q. I will ask you, Mr. Craig, about how many acres there is in the Raleigh plantation after all these cavings off?

A. I should judge one thousand (1,000) acres, fully.

Q. I will ask you if, where the quarters stood, it has not all caved into the river long ago—where the old quarters stood?

A. Yes, sir; that has all caved into the river since 1868.

Q. I will ask you, Mr. Craig, if you knew Dr. Boyd—Fred. W. Boyd?

A. Yes, sir.

Q. Did he ever live in this parish with his family?

A. Not that I am aware of; he was a frequent visitor to his father-in-law's.

Q. Do you think if he had been a citizen of this parish you would have known it?

A. I think so.

Q. Well, was he a citizen of this parish?

A. He was not, to my knowledge.

313 Q. Has he or not allways been a non-resident of this State?

A. I think after his father-in-law's death his family lived here a short time.

Q. When did they move permanently away from the parish—the plaintiff and her husband?

A. Maybe in 1861, just before the war.

Q. Has his family ever resided in this parish since as their place of residence?

A. No, sir; not that I am aware of.

Q. I will ask you whether Mr. Boyd—Fred. W. Boyd—cultivated or leased the Raleigh plantation in 1866?

A. He worked partners in 1866.

Q. Who was his partner?

A. Mr. Pittman; I don't know his given name.

Q. What was the result of their planting experiment in 1866; was it profitable or unprofitable?

A. Unprofitable.

Q. Did they make any money planting in 1866?

A. No; I think not; nor anybody else.

Q. I will ask you if the losses were not immense to those who were endeavoring to plant in 1866 and 1867 on a large scale?

A. Yes, sir; I think they were.

Q. How many bales of cotton did Boyd and Pittman make, probably, in 1866?

A. I can't say.

Q. Was there an average crop produced on the plantation?

314 A. No, sir.

Q. I will ask you whether you saw the cotton there in the fall of 1866?

A. Summer and fall; yes, sir.

Q. What kind of a crop was it; what kind of a crop was produced on it?

A. Well, there was a very poor crop; the worms come on it.

Q. Was it or not almost a total failure?

A. Nearly so.

Q. I will ask you if they did not lose a great deal of money?

A. I suppose so.

Q. From your judgment in planting, did the money they made that year come anywhere near paying the expenses of the crop?

A. I think not.

Q. Who cultivated Raleigh plantation in 1867?

A. I disremember; I don't know whether Mr. Boyd cultivated it or not; he may have had it two (2) years; I don't know.

Q. Do you think that that plantation yielded any net revenue in 1866 and 1867 over and above expenses—made anything?

A. I think not.

Q. What was the condition of the plantation in 1868; was much of it in cultivation, or what was its condition?

A. It was pretty much all grown up in 1868; there were some small patches of eighty (80) or one hundred (100) acres in cultivation.

315 Q. I will ask you whether or not in 1868 the plantation was not mainly abandoned as a cotton plantation?

A. Yes, sir; the labor had all left it.

Q. Did I understand you to say that the plantation was exposed to overflow from these levees that were down?

A. Yes, sir.

Q. I will ask you when the Raleigh plantation was sold, in Oct., 1868, if the levees were not down and the plantation in a dilapidated condition?

A. Yes, sir; they were down and the plantation neglected.

Q. I will ask you whether or not the hands, most of them, had not left the plantation?

A. Yes, sir; the greater number.

Q. I will ask you, Mr. Craig, whether or not in 1866 and 1867 there was a great immigration to this parish of Northern capitalists to try the experiment of raising cotton with free labor?

A. Yes, sir.

Q. I will ask you whether or not there was great demand for good plantations in 1866 and 1867 by these Northern men who were anxious to *to* try the experiment of raising cotton with free labor?

A. Yes, sir; in 1866 and 1867.

Q. Was the experience of these men in this enterprise profitable or unprofitable?

A. I think universally unprofitable, so far as I know.

316 Q. I will ask you whether Hoyt, Sprague & Co., for whom you were manager in 1866 and 1867 on the "Carondelet" plantation, did not sustain immense losses by their experiment by this method of carrying on business?

A. They did.

Q. I will ask you what effect did the disasters of 1866 and 1867 produce in this country; what was the effect upon the financial condition of the people resulting from those losses?

A. The effect was ruinous.

Q. I will ask you if the price of property and rents of lands did not run down to a very low point in the neighborhood of Raleigh plantation?

A. In 1868 it did.

Q. Did I understand you to say that on account of the overflow and loss of crops in 1866 and 1867 that that neighborhood was pretty much abandoned and the lands laying out generally in that neighborhood in 1868?

A. Yes, sir.

Q. I will ask you, Mr. Craig, if you have ever seen a darker or more gloomy time than there was in Oct., 1868, after all these losses had been sustained by these people?

A. In the spring of 1868 things looked very gloomy.

317 Q. I will ask you, Mr. Craig, if there was much money—much ready money—in the country or much demand for property in 1868, on account of these misfortunes?

A. No, sir; there was no money in the country.

Q. Do you think lands could have been sold at public auction in 1868 for fifteen dollars ($15.00) or twenty dollars ($20.00) an acre cash?

A. Perhaps not, exactly in 1868.

Q. I am talking about 1868?

A. No; there was no money in the country to buy with; at the same time, I think they were worth fifteen or twenty dollars ($15 or $20).

Q. I will ask you, Mr. Craig, if property exposed at sale in 1868 wouldn't *it* be at the mercy of bidders who happened to have the cash?

A. Yes, sir; entirely.

Q. I will ask you if in many instances property did not sell for almost a nominal price on account of the depressed condition of the country at that time—I refer to public auction?

A. I don't know that much property was sold at that time.

Q. Did Doctor Boyd live on the Raleigh plantation in 1867?

A. I disremember; I think not.

Q. I will ask you whether in 1868 he was in charge of the Raleigh plantation?

A. Not that I am aware of.

318 Q. When was he back to this parish again; when did you next see him after he left town?

A. I don't think I saw him until about two (2) years ago.

Q. Do you think he has been in the parish since 1867, until about two (2) years ago?

A. Not that I am aware of.

Q. You think if he had come back to the parish after 1867 you would have known it?

A. No; I can't say; I did not see him.

Q. You don't know of his being in the parish?

A. No, sir; I don't know of his being in the parish.

Q. He was not in the neighborhood of Raleigh plantation?

A. Not that I am aware of, sir.

Q. I understand you to say Dr. Boyd and his wife are non-residents of this parish?

A. I think so.

Counsel for complainant specially objects to the irrelevancy of the testimony as to the residence of Dr. Boyd.

Reserving this and all other legal objections and exceptions, counsel for complainant propounds the following redirect interrogatories:

By Mr. SAUNDERS:

Q. Mr. Craig, were you a creditor of the succession of James Raley?

A. Yes, sir.

Q. What sum did that succession owe you?

319 A. Nine thousand dollars ($9,000).

Q. In what shape was that debt?

A. Well, I held Mr. Raley's note for it. I got a judgment against the property—against Mr. Boyd as administrator—after the war, in 1868—I suppose 1867 or 1868—before Judge Wyly bought the place.

Q. Did you know anything of the sale of the Raleigh plantation in Oct., 1868?

A. I had heard of it and I saw the advertisement.

Q. Was it your intention or not to bid for the Raleigh plantation when it was sold?

A. Yes; I intended to bid for it, but I did — have much ready money, but I could have got the money in a few days.

Q. Then, why did you not bid for it?

A. Well, it was sold before I got there.

Q. Explain fully the circumstances which prevented you from bidding at the sale of the property.

A. The property was sold before I got to Floyd, at the courthouse.

Q. At what time of day did you reach Floyd?

A. I cannot say positively what the time was; it might have been after 11 o'clock; it might have been later.

Q. How much had you intended to bid for the property?

A. I intended to bid all of my claim and maybe five

320 thousand dollars ($5,000) more—that is, that was the understanding—but I did not have the money in my hand to do it with, but I suppose an arrangement could have been made in a day or two (2) by which I could get it.

Q. Did you arrive before or after the advertised hour of sale?

A. I disremember when the hour was. I suppose I arrived pretty

near the time; it may have been after; not having the amount of money, I did not expect I could make a valid bid.

Q. Was anything said to you by any one present in regard to that sale?

A. I don't understand you, sir. At the time it was sold?

Q. Did either of the attorneys, Messrs. Sparrow and Montgomery, or Judge Wyly or Mr. Charles R. Egelly, say anything to you in regard to it—to the sale of the property?

A. No; Judge Montgomery remarked, when I was prepared to give more for the property than it had brought, that he was sorry I had not made the offer in time; he would rather had five thousand dollars ($5,000) than what Judge Wyly bid for it.

Recross-examination by counsel for deft:

Q. About how much were you prepared to give or bid in cash for the property on that day and put up the money?

321 A. I think I had about a thousand dollars ($1,000).

Q. If you had reached there while the property was being cried off could you have bid off the property for twenty-five hundred dollars ($2,500) cash on the spot for it?

A. Not on the spot—no, sir.

Q. Do you think that property—the Raleigh plantation—could have been sold on the 20th of Oct., 1868, for cash on the spot at more than twenty-five hundred ($2,500)?

A. It might not, but it ought to have. I think, being an interested party, my evidence would not be worth much.

Q. What do you mean by being an interested party?

A. A creditor of the estate.

Q. Do you think if you had been there that you were prepared to bid higher than Wyly for that property?

A. No; not in cash.

Q. Do you know of any other bidder that was there prepared to put up cash on the spot for more than was bid for the property by Wyly?

A. No, sir.

Redirect examination by Mr. SAUNDERS:

Q. What sum in cash would you have bid, in addition to your claim?

322 A. I would have bid five thousand dollars ($5,000)—that is, I could have got the money in a few days. I had a thousand dollars ($1,000) in cash, and would nave been willing to give five thousand dollars ($5,000).

By counsel for defendant:

Q. I will ask you whether W. G. Wyly knew of your intention to buy that property, or that you expected to bid for it when he bid it in himself?

A. No, sir.

Q. Did you make any arrangement with the administrator pre-

vious to the sale, so as to try to use your claim at the bidding as so much cash?

A. No, sir.

Q. There was no arrangement by which your claim could be taken as cash by the administrator? You had made no cash arrangement to bid at the sale beyond your thousand dollars ($1,000) at that time?

A. No, sir.

By Mr. SAUNDERS:

Q. Did you speak to the administrator in regard to your intention to bid?

A. No, sir.

Q. Had you spoken to Judge Wyly in regard to your intention to bid?

A. No, sir.

Counsel for defendant offers in evidence document marked Exhibit "B," to which counsel for complainant objects.

323 By COUNSEL FOR DEF'T: Do you recognize that as your claim and the claim of Mr. Irwin against the estate of James Raley and the rule taken against the estate to pay you your money; do you recognize that as your claim presented to the court?

A. Yes, sir; I recognize that document as embodying my claim and the claim of Mr. J. C. Irwin against the estate of James Raley praying that Fred. W. Boyd, dative executor, be ordered to file his account, and if he have sufficient funds on hand that he be required to pay the debt.

Q. I will ask you whether either of these claims have ever been paid?

A. No, sir.

J. J. IRWIN sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Irwin, what is your name, age, and residence?

A. J. J. Irwin; reside now at Omega; 41 years old.

Q. Mr. Irwin, where is your home?

A. It is in Madison parish.

Q. Where did you reside in the year 1868?

A. I lived in Eastern Mississippi.

Q. Did you reside in this parish at any time during the years 1866 and '70?

324 A. I lived in this parish in 1866 and 1867; in 1868, 1869 I lived in Mississippi.

Q. Were you in this parish at any time during the year 1868?

A. No, sir.

Q. Were you acquainted with the late Micheal Gingery?

A. No, sir.

No cross-examination.

CHARLES MCALLISTER sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. McAlister, what is your age, your residence, and your occupation?

A. Sixty-five (65) years old; live in Carroll parish; occupation, planter.

Q. Cotton planter?

A. Yes, sir.

Q. Whereabouts in this parish do you reside?

A. I reside about ten (10) miles from here, on the river.

Q. How far from the Raleigh plantation?

A. About ten (10) miles.

Q. How long have you been engaged in planting?

A. In planting? Well, I suppose about forty (40) years or a little upwards.

325 Q. Were you engaged in planting in the year 1868?

A. Yes, sir.

Q. Do you own a plantation?

A. No, sir.

Q. Were you renting a plantation in that year?

A. Yes, sir.

Q. What plantation were you renting?

A. "Sauve Terre."

Q. Where is that plantation?

A. It is about ten (10) miles from here—probably eleven (11).

Q. What rent were you paying for it?

A. Ten (10) dollars an acre.

Q. What was the ordinary rental of cotton lands in this parish in the year 1868 per acre?

A. I think it was about ten dollars ($10).

Q. What was the ordinary value of cotton lands per acre in this parish in the year 1868?

A. I can hardly answer that; I can hardly say what it was worth; it was worth a great deal more than it could be sold for; I know that; cotton land, although it was well worth from twenty to thirty dollars ($20 to $30) an acre, I don't know that it could have been sold for that.

Q. Are you acquainted with the Raleigh plantation in this parish?

A. No, sir; not specially; I have seen but little of it before the war.

326 Q. What is the quality of the lands on that plantation.

A. Well, it was considered a very fine plantation before the war.

Q. Are the lands of that plantation of average quality?

A. I would suppose so—fully up to that.

Q. What do you think was a fair valuation of the Raleigh plantation in 1868?

A. Well, just as I tell you; I would suppose it was worth from twenty to thirty dollars ($20 to $30) an acre; I should suppose it

was really worth that, but what it could be sold for is a very different thing.

Q. Mr. McAlister, if you had been appointed appraiser to value the lands of the Raleigh plantation at what sum would you have appraised them?

A. Well, I suppose then I could not have appraised it for less then ten dollars ($10) an acre.

Q. In the year 1868 would you have regarded an apprais-ment of those lands at a dollar and a half ($1.50) an acre as a proper and correct valuation?

A. I should have thought it was very low, though the times were very hard in this country then.

Q. Would you have considered that sum a just valuation per acre of that land?

A. No, sir; I would not.

Q. Were you acquainted with the late Micheal Gingery, of this parish?

A. No, sir.

Q. Do you know whether he could read or write?

A. I do not.

327 Counsel for defendant, under agreement with opposite counsel, now makes the same objections to the deposition of this witness as made to the depositions of the witness Mrs. Newman and other witnesses, and objection applies to this and and every one of the answers heretofore given by this witness, under the understanding with the opposite counsel, to save repetitions—to save repeating the objection after each question and answer. Def't's counsel mainly objects to the competency of the parole statements of this witness which is elicited for the purpose, if possible, of effecting his title to real estate; that def't's title can in no manner be effected by the opinions and conjectures of this witness as to the value of property twelve or fourteen (12 or 14) years ago in this parish, being a purchaser of the Raleigh plantation in good faith, the highest bidder, and the adjudicatee of that plantation, which was sold at a succession sale on the 20th of Oct., 1868. The def't, W. G. Wyly, cannot be affected in his title by the opinions and conjectures of this or any other witness as to what he thinks was the value of property twelve or fourteen (12 or 14) years ago; that the suppositions and opinions of this witness are matters entirely foreign to the issues of this case, and titles to realty ought not to be effected thereby; that this case now stands at issue on the pleas and exceptions of def't; that
328 the Federal court has no jurisdiction; that *that* the succession is insolvent; that the complainant, Mrs. Boyd, has no interest in any of it; that if any loss resulted from the sale it was a loss to the creditors and not to Mrs. Boyd; that the plea of five and ten (5 and 10) years' prescription bars her action; that none of the issues raised in said pleas and exceptions are adequate to authorize the introduction of the testimony sought to be elicited.

Reserving the foregoing and all other legal objections to the admissibility and competency of the parole statements of this witness, counsel for defendant propounds the following cross-interrogatories:

By counsel for def't-:

Q. Mr. McAlister, I will ask you whether or not you knew, when you testified as to the value of the Raleigh plantation in 1868, that it was then exposed to overflow by the levee, being down at the upper end of it, and the "Hawes Harris" levee being down below and the land exposed to the waters rushing on it and overflowing it?

A. Well, pretty near all the whole country was in the same fix. I took it as a general thing that the land was worth that much rent. I was paying ten dollars ($10) an acre rent for land in about the same condition—exposed; the levees were down and the country exposed to the waters.

329 Q. Do you recollect when your counsel, W. G. Wyly, bought a piece of land for you on Joe's bayou, in 1868?

A. Yes, sir.

Q. Do you recollect what that place was struck off at?

A. It was struct off at a dollar ($1.00) an acre. The land was twelve (12) miles back from the river.

Q. What was that place called?

A. I don't know whether it was called the Buckner place or not.

Q. How many acres were in that place?

A. Four hundred (400). It was appraised at one dollar an acre.

Q. Do you recollect when it was sold, bought in?

A. No; but I think it was in 1867.

Q. In 1867?

A. I think so.

Q. Did I understand you to say that place was bought in by you at a dollar ($1.00) an acre?

A. Yes, sir.

Q. Was it considered a very valuable plantation before the war?

A. Well, I suppose it was worth forty or fifty ($40 or $50) an acre before the war.

Q. What caused this depreciation of property in this parish after the war?

330 A. The "Ashton" *brake* caused the depreciation of that portion of the property back there.

Q. I will ask you whether or not a great many valuable plantations were sold about that time—that is, in the fall of 1867 and 1868—at very low prices on account of the exposure of the country to overflow and from other causes?

A. Of my own knowledge, I don't know. I was not present at any sales of property except that one you spoke of.

Q. What do you think was the cause of that place selling so low?

A. Because the Ashton *brake* was down, and there was no probability of its being repaired or put up.

Q. I will ask you, Mr. McAlister, how much of the "Sauve Terre" plantation did you rent and cultivate in 1868?

A. Capt. King and myself worked four hundred (400) acres.

Q. Who cultivated the "Sauve Terre" plantation in 1867?

A. Capt. King, W. B. King, the same man.

Q. Who cultivated it in 1866?

A. Horace B. Tibbetts.

Q. Were you his manager on the place in 1866?

A. Yes, sir.

Q. About how many acres were cultivated on that place in 1866?

The WITNESS: The "Sauve Terre" place?

COUNSEL FOR DEF'T: Yes, sir.

331 A. I suppose probably one hundred (100).

Q. What was the result of the planting on that place in 1866; was it profitable or disastrous?

A. No, sir; disastrous.

Q Did you know or hear of many Northern men coming down here with a great deal of capital in 1866 and 1867 for the purpose of trying the experiment of raising cotton with free labor?

A. Yes, sir; I heard of a good many of them.

Q. Didn't this influx of Northern capitalists create a great demand for lands about that time for occupation of lands to be worked?

A. I think so; yes, sir. In 1866 I know it did.

Q. From your experience and observation what was the result generally of these people that were trying these experiments?

A. Well, in 1866 and 1867 both it was a failure entirely.

Q. Did they get broken up?

A. I suppose so; I don't know of their being broken up, but I know they failed to make a crop.

Q. You know the crops of 1866 and 1867 were pretty generally disastrous?

A. I think so.

Q. Did — hear anything or see anything of the sheriff being out pretty lively then?

A. Yes, sir; in that neighborhood.

332 Q. Was there not a great deal of property under seizure in the years 1866 and 1867?

A. Well, I can't say positively; I know there was some in the neighborhood; I have never seen any that was particularly under seizure; I have seen the sheriff going around there.

Q. I will ask you if you have seen times look bluer and things look more disastrous than they did after the failures of 1866 and 1867 in this parish?

A. They looked very blue in the spring of 1868, to-.

Q. I will ask you if a great many of the old citizens that had mortgaged their plantations in order to get money to try this experiment of raising cotton with free labor were not very unfortunate in their crops in consequence of the failures of the crops of 1866 and 1867?

A. I don't know about that.

Q. Do you know of any plantation in 1866 and 1867 that made a great deal of money?

A. None that I know of.

Q. I will ask you if there was any clear profit made on the "Sauve Terre" plantation in 1866 and 1867?

A. I am satisfied they lost.

Q. Were these plantations in 1867 and 1866 in this parish yielding any net revenue after their expenses were taken out?

The WITNESS: In 1866 and 1867?

COUNSEL FOR DEF'T: Yes, sir.

A. Well, of course they were not.

Q. No revenues were made—no net revenues?

333 A. No, sir.

Q. Were there many land buyers with money in 1868 trying to invest in lands in this parish?

A. Not as I know of; I did not see any.

Q. What was the cause of lands selling so low at auction in 1868?

A. I don't know; I suppose it was because very few people had money.

Q. Was not property put up at cash sales at that time pretty much at the mercy of the bidders that happen- to have money?

A. Well, I suppose it was at the mercy of bidders.

Q. Do you believe any of these plantations could have been sold at public auction for cash for as high a price as fifteen or twenty — ($15 or $20) an acre?

A. Well, I suppose nobody had money to give for them.

Q. Then, as I understand, you attribute the low price that property brought at sheriff's sale during this time to the disasters of the crops and the want of money in the country?

A. I suppose that is it.

Q. Did I understand you to say you saw much of the "Raleigh" plantation after the war?

A. No, sir; very little of it.

Q. I will ask you if there is not a bad caving front on the "Raleigh" plantation?

A. I don't know; I have not been there at all.

334 CYRUS A. HEDRICK sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Hedrick, what is your name, your age, and your residence?

A. My name is Cyrus A. Hedrick; forty-three (43) years of age; I reside in East Carroll parish, Illawara post office.

Q. Did you reside in this parish between the years 1866 and 1870?

A. I did.

Q. What was your occupation in the year 1868?

A. In 1868 I was deputy sheriff, part of the time, and assessor.

Q. Assessor of what?

A. Assessor of property in the parish.

Q. For purposes of taxation?

A. Taxation; yes, sir.

Q. What were your duties as assessor?

A. Well, my duties were to assess property at a fair valuation—fair cash valuation. Allow me to say I don't remember whether I

was assessor in 1868; I was the first assessor elected after the war; I assessed the taxes of 1865, 1866, and 1867, and may possibly have done so in 1868; I don't remember now.

Q. You say it was your duty to assess lands at their fair cash valuation?

A. Yes, sir.

335 *A.* At what sum were cotton lands assessed in this parish in the year 1868—at what sum per acre?

Q. Well, these front river lands were generally assessed about twenty-five dollars ($25.00) an acre, as well as I can recollect. I mean the lands there that were tilled and worked, you know—cultivated lands.

Q. Are you acquainted with the "Raleigh" plantation, the present residence of Judge Wyly, in this parish?

A. Yes, sir.

Q. Do you remember at what sum per acre that plantation was assessed in 1868?

A. I think it was assessed at about that price—twenty-five dollars ($25.00) per acre—that is, we generally estimated cultivated lands at twenty-five dollars ($25.00) an acre. Most always the lands were given in by some one—the agent or some one representing the place. They usually placed the price upon it.

Q. Was the valuation of twenty-five dollars ($25) an acre usually given in by the land owners in 1868?

A. Yes, sir; that was about the price, I think, for front river lands—for lands that were protected by the levees.

Q. Mr. Hedrick, did you know the "Raleigh" plantation in 1868?

A. I did.

Q. What was its condition that year?

A. Well, I think it was overflowed that spring.

336 Q. Was the overflow of sufficient magnitude to cause the assessment of that plantation to be lowered?

A. Well, now, that I can't really say. I was not there during the time the water was on the place. The assessments were made afterwards. I don't know that there was any difference. I can't say without referring to the rolls.

Q. Do you consider that the assessment of a dollar and a half ($1.50) per acre of the lands of the "Raleigh" plantation in 1868 was a fair and full valuation of those lands?

A. I don't really think that a dollar and a half ($1.50) an acre was a fair assessment.

Q. At what would you have appraised the lands of the "Raleigh" plantation in 1868 for the purpose of a probate sale?

A. I suppose if I had been called upon to appraise it, thinking as I do now, that I would have appraised it at about ten dollars ($10.00) per acre. That would have been a fair valuation.

Q. Thinking as you did then, at what would you have appraised them?

A. Well, I can't make any estimate of the lands. At that time a great many places sold cheap.

Q. You say you were deputy sheriff?

A. I was.

Q. Did you know Micheal Gingery?

A. Yes, sir.

337 Q. Could he read or write?

A. He could not; as well as I recollect, he always made the usual mark.

Q. Is the month of October considered a favorable time of the year for selling property—I mean for selling large cotton plantations for cash?

A. I can't really say; a plantation ought to show itself about the month of October better than at any other season of the year, I should think.

Q. Do the planters usually receive the returns of their crops about the month of Oct.?

A. No, sir.

Q. Is there generally as much money in the parish in the month of Oct. as there is later on?

A. Not generally.

Q. Mr. Hedrick, do you know what lands were usually rented for on the Mississippi river in 1868?

A. About ten dollars ($10.00) an acre, I think, was the average rent of river lands.

NOTE.—Under agreement of counsel, counsel for def't now makes his objections to the competency and admissibility of this evidence; that this parole evidence is not the best evidence of the matters and things inquired of; that such proof is wholly inadmissible on the trial of the issues of this case now pending in court. Counsel for def't makes all the objections that he has heretofore

338 made to the evidence of the witnesses that have been examined; that the opinions and conjectures of this witness as to what transpired fourteen (14) years ago are matters that are not admissible against the defendant to impeach his recorded title to the "Raleigh" plantation.

Reserving these and other legal objections to the admissibility and competency of the foregoing questions and answers of this witness, counsel for def't propounds the following cross-interrogatories:

By counsel for def't:

Q. Mr. Hedrick, are you sure you assessed the Raleigh plantation in 1868?

A. I say I am not sure I was the assessor in 1868.

Q. Were you not deputy sheriff in the fall of 1867?

A. I was.

Q. Did you not then have charge of a number of plantations on the Mississippi river in the neighborhood of Raleigh plantation?

A. I did have, but I frequently acted as deputy sheriff while I was assessor.

Q. Do you or not recollect whether you actually seized the Raleigh plantation in 1868?

A. I don't; I don't remember now what year I went out of office.

Q. I will ask if there is not a very bad caving front on that plantation?

A. I think there is now.

339 Q. I will ask you, Mr. Hedrick, in your experience, whether or not there were great losses and disasters sustained by the planters of this parish by the failure of the crops in 1866 and 1867?

A. There was.

Q. I will ask you if many people were not broken up by the disastrous results of those two (2) years in their experiment of planting with free labor?

A. A great many were.

Q. I will ask you whether, as deputy sheriff, you were not frequently called upon to execute writs of provisional seizure and attachments and other writs upon the personal property of the owners of various plantations on the river?

A. I was.

Q. Will you be kind enough to state what plantations you had under seizure, as deputy sheriff, in the fall and winter of 1867, in the neighborhood of "Raleigh plantation?"

The WITNESS: You mean the crops or the land?

COUNSEL FOR DEF'T: You can explain the whole thing.

A. Well, I was keeper for the "Bell" place, "Pecan Grove," "Carondelet," "Wilton," and "Transylvania," and maybe possibly some others, but I have forgotten now. I was the keeper of the property of the "Wilton," "Carondelet," and "Bell" places.

340 Q. I will ask you whether or not those that had been engaged in planting during that period were not pretty thoroughly broken up by those disasters?

A. They were, I think, in 1866 and 1867.

Q. I will ask you now, Mr. Hedrick, whether those Northern capitalists that came down here in 1866 to go into this planting experiment of raising cotton with free labor, whether after the disasters of those years they did not begin to leave here and go back again?

A. I think so; yes, sir.

Q. And was it not to prevent, in many instances, their escape from the country with their property that, at the instance of their creditors, the seizures were made?

A. Yes, sir.

Q. Were the crops seized?

A. Yes, sir; whatever we could get hold of.

Q. Have you ever seen, Mr. Hedrick, in this country a more gloomy condition of things than there was here after the disasters of 1866 and 1867?

A. I never have.

Q. Do you think, after those disasters, it was possible to have sold property at the court-house of this parish at the valuation you have mentioned or any sum near it, if it was forced upon the market at a cash sale?

A. I think not.

341 Q. Have you not known lands as fine as the Raleigh plantation and other lands struck off at auction at almost a nominal price?

A. I have known several places.

Q. During 1868?

A. During 1868.

Q. Do you not think that where property was forced upon the market during that period that it was at the mercy of whatever bidders might happen to be there and had money?

A. It was generally at the mercy of those who had money.

Q. Were there many people in Oct., 1868, and about that time attending these sheriffs' sales at the court-house with large sums of money to buy?

A. Not many.

Q. Did I understand you to say there were very few bidders with ready money to buy at that time?

A. Very few.

Q. Do you think on the 20th of Oct., 1868, when the Raleigh plantation was adjudicated to W. G. Wyly at public auction for twenty-five hundred and thirty-three dollars and five cents ($2,533.05) or thereabouts that it was possible on that day at a public offering to have obtained a larger cash price for that property than was obtained?

342 A. At that time I can't say; I don't expect there was money enough in the possession of any person to have paid more for it than was paid at the time.

Q. You don't know of any bidders that had any more money to pay for it than that?

A. I do not.

Q. From your knowledge of the situation of the country at that time, do you believe it was possible to have obtained a greater price at auction sale for this property than was obtained by the sheriff or the party making the sale?

A. I do not, at that time.

Q. From what you ascertained and know, did you not regard this as a fair, open sale—public sale of the property—as the deed and process verbal of the sale seems to import?

A. I don't know whether there was anything wrong about it.

Q. To what do you ascribe this great financial depression and break-up of the country—to what do you ascribe it, Mr. Hedrick?

THE WITNESS: *A.* To what cause?

COUNSEL FOR DEF'T: Yes, sir; the sale of this property; what made it so depreciated at that time?

343 A. From the fact of the failures of the crops in those two (2) years and the overflow; the people generally were impoverished; no money in the country.

Q. Don't you think this plantation (Raleigh) could have been sold for a large price when Fred. W. Boyd had charge of it as dative executor, in the early part of 1866, when there was plenty of money in the country?

A. Well, perhaps it could; there were a great many places sold for large prices at that time.

Q. Don't you think if this executor had gone to work to provide

for the creditors that he could have sold this property much more advantageously in 1866?

A. I don't know what he could have done; I would have supposed he could.

Q. Don't you suppose, in 1866, *that* was better opportunity (in 1866) to obtain a larger price for this property than there was in 1868, after these disastrous failures of the crops had occur-ed?

A. There is no doubt of it.

Q. Do you know of any plantations that were sold in 1868 for cash at public auction that brought what you have estimated this property to be worth?

A. I don't think I remember of any bringing as high a price as I think property was worth at that time.

Q. As deputy sheriff, was it not your experience that property almost invariably sold for a very small sum in 1868 when forced upon the market at a public sale?

344 A. It did.

Q. Was there any peculiarity about the sale of this property more than other sales that took place at that time?

A. Nothing that I know of.

Q. Then do I understand you to ascribe this small price to the fact that there was very little money in the country and few people able to bid upon property, owing the disasters of the previous years?

A. I do.

Q. Then do I understand you to say there is a difference between the market cash value of property and its intrinsic value?

A. Yes, sir.

Q. There is a difference between the two valuations?

A. Yes, sir.

Q. Did I understand, Mr. Hedrick, you to say that when you estimated this property as worth so much you referred to its intrinsic value only and not to its value at a cash sale?

A. I would consider that its cash value as assessor. I was not present at any sale at the time. I did not consider I had anything to do with selling the property.

Q. Then do I understand you to say that property has an auction cash value and an intrinsic value?

345 A. Yes, sir.

Q. Do I understand you to say, Mr. Hedrick, that the auction value of property is what it brings at public auction?

A. Yes, sir.

Q. I will ask you, Mr. Hedrick, from your experience, whether this property had any higher auction value on that day in that market than what it sold for?

A. I don't suppose it did; can't see why it should.

Objected to by counsel for complainant.

Redirect examination by Mr. SAUNDERS:

Q. In your opinion, is the auction value of property the sum it brings at auction when sold?

A. Yes, sir.

Q. Do you know what rents were ordinarily obtained per acre for cotton lands on the Mississippi river in this parish in the year 1868?

A. I think about ten dollars ($10.00) for lands secured from overflow.

And neither party offering and being ready to examine any other witnesses this day, I adjourned the examination herein ordered, in the presence of all parties, until Thursday, July 20th, 1882, at the same place.

(Signed) J. B. BEATTIE,
Special Examiner.

346 *Fourth Day's Proceedings.*

JULY 20TH, 1882.

A. G. BELDEN sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Belden, how old are you, where is your residence, and how long have you resided in this parish?

A. I am thirty-eight (38) years old; I have lived in this parish since the war; I live in Lake Providence now.

Q. What is your occupation?

A. I am deputy sheriff.

Q. What was your business just after the war—in the years 1866 and 1867 and 1868?

A. In 1867 and 1868 I think I was deputy sheriff.

Q. Have you been engaged in cotton planting?

A. I did in 1866, though I never engaged in it very largely.

Q. What was the rental value of Mississippi river cotton lands in this parish in the year 1868?

A. Well, I really can't tell you; in 1868 I was not out much.

Q. What was the value of Mississippi river cotton lands in this parish in the year 1868?

A. I can't say, sir.

Q. Do you know the Raleigh plantation, on the Mississippi river, in this parish?

347 Answer. Yes, sir; I know it; yes, sir.

Q. What is the character of the land on that place?

A. Well, take it altogether, I don't know; it is considered a good place.

Q. Were you acquainted with Micheal Gingery?

A. Yes, sir.

Q. Is he living or dead now?

A. He is dead.

Q. Could he read or write?

A. Well, sir, I don't think he could.

Counsel for def't objects to the testimony of this witness on the ground of inadmissibility and incompetency.

Reserving the benefit of these and all other legal objections to the

evidence of this witness, counsel for def't propounds the following cross-interrogatories:

By counsel for def't:

Q. Mr. Belden, as deputy sheriff and from the experience you had in running about over the country here in this parish, I will ask you what was the results of the experiment of those Northern capitalists that came here in 1866 and undertook the cultivation of large plantations. Did they make money or did it *brake* them up?

A. I think, as a general thing, they got broke up; that is my impression.

Q. I will ask you whether or not a great many Northern men did not come here with means for the purpose of trying this ex-
348 periment of raising cotton with free labor in 1866 and 1867, and whether or not that did not produce a temporary and high demand for prices of lands and the rents of land at that time?

A. I don't know how to answer that question. I don't know anything about it.

Q. Well, I will ask you if you remember the condition of the country in the latter part of 1867 and 1868?

A. In 1867 the country was overflowed.

Q. Was there an overflow in 1866?

A. Yes, sir.

Q. I will ask you what was the condition, the financial condition, of affairs in this parish in the latter part of 1867?

A. In the latter part of 1867 everybody was pretty hard up; times were pretty tight.

Q. I will ask you whether you have ever seen gloomier times than there was in this parish after the disasters of 1866 and 1867?

A. Well, it was mighty dull with me.

Q. I will ask you whether or not the sheriff was employed a great deal in executing writs against these lessees and the other people in the parish in order to seize property and collect debts?

A. Yes, sir; in 1867 and 1868 there were more judgments than any time since the war.

Q. I will ask you whether or not a great many plantations
349 up and down the river throughout this parish were under seizure by the sheriff during that period, 1867?

A. Well, I don't know about the plantations. I know the mules were seized.

Q. Was not the sheriff with his deputies making seizures all over the parish pretty nearly?

A. Yes, sir.

Q. Were not keepers on nearly all of the river plantations in this parish in the latter part of the year 1867?

A. Yes, sir; on a good many.

Q. What effect did that produce upon the financial condition of the people; were they not very much distressed by their failures in planting?

A. They could not pay their debts and were seized.

Q. I will ask you if in 1868 if the auction prices of property at

forced sales for cash was not extremely low at the court-house in this parish?

A. If you speak of personal property——

Q. No; of lands.

A. I don't remember of any places being sold—that is, I can't recollect of any particular places; there were mules and things of that sort.

Q. How was the personal property selling, high or low?

A. It was selling very cheap.

Q. Do you know Thos. D. McCandless, late recorder?

350 A. Yes, sir.

Q. Was he considered an honorable and upright man?

A. Yes, sir; he was considered an upright, good man.

Q. Do you think Thos. D. McCandless would commit the crime of perjury?

A. No, sir; I do not.

Q. Do you think he would commit subornation or perjury?

A. I don't think he would be guilty of anything that was wrong; that is my opinion about it.

Q. Do you think, from your knowledge of him, that if he was called upon to appoint appraisers to make an inventory he would allow fraud to be committed in the discharge of their official duties?

A. I don't think he would.

Q. Was he regarded as a faithful and upright officer while in the discharge of his office as recorder of this parish?

A. Yes, sir.

Q. Do you know Charles R. Egelly?

A. Yes, sir.

Q. Judge J. W. Montgomery?

A. Yes, sir.

Q. W. G. Wyly?

A. Yes, sir.

Q. Do you think they are capable of combining to rob any one?

A. No, sir; I don't.

351 Q. Do you believe they would confederate together to rob a widow woman out of her property?

A. No, sir; I don't think they would.

Counsel for complainant objects to the testimony of this witness on cross-examination on the ground of irrelevency.

Redirect examination by Mr. SAUNDERS:

Q. Mr. Beeden, was the condition of this parish in 1868 different from what it was in 1869?

A. Well, if I remember rightly, I think it was. I think — 1869 we had a good crop here.

Q. Was there a very great difference in the value of lands in the years 1868 and 1869?

A. I don't remember whether it had the same valuation or not. I don't remember about the valuation of lands.

Q. Do you think the lands this year, when there was a disastrous overflow, are worth a great deal less than they were last year?

A. Yes, sir; I think they are worth less this year than they were last year; the improvements are all swept away.

Q. If the lands were worth twenty dollars ($20.00) last year how much are they worth this year?

A. That is something I can't answer. If you take the "Melbourne" place down here, Col. Buckner has realized nothing from that place this year.

352 Q. Would these lands be worth any more than a dollar and a half ($1.50) an acre this year?

The WITNESS: You mean to sell?

Mr. SAUNDERS: Yes, sir.

A. If the levees are not put up it ain't worth that.

Q. Well, suppose the levees are rebuilt, then would the lands recover their former value?

A. Well, no, not their former value. The improvements are gone and there is a deposit on it; they don't recover their whole value for years at least.

Q. Of how much less value are they after an overflow and the rebuilding of the levees than they were before?

A. Well, I don't know, sir.

Q. Would such lands be worth two-thirds ($\frac{2}{3}$) of their former values?

A. No, sir; I don't think they would.

Q. Would they be worth one-half ($\frac{1}{2}$) of their former price?

A. If the levees were put up, yes, sir.

Q. Suppose only a small portion of the plantation had been overflowed, would that greatly depreciate its value?

Counsel for def't repeats all objections heretofore made to the testimony of this witness, and he insists that this witness has expressed his want of knowledge of the matters and things inquired of, and that it is utterly incompetent for counsel for com-

353 plainant to enter into a discussion with this witness, and by putting hypothetical cases ask his opinion as to what would be the effect of this thing or of that thing.

A. It would depreciate it some.

SAUNDERS D. OLIVER sworn and examined on behalf of complainant:

Direct examination by Mr. SAUNDERS:

Q. Mr. Oliver, what is your age, your present residence, and how long have you resided in this parish?

A. I am in my fifty-sixth (56th) year. I reside at this place. I have lived in this parish about thirty-six (36) years.

Q. What has been your occupation?

A. That of a merchant, planter, and official of the parish. I was first employed as a clerk.

Q. What was your occupation in the years 1866, 1867, and 1868?

A. My residence has not been continuous. From the year 1866 until 1870 I resided out of this parish. I resided in New Orleans during that time.

Q. Were you acquainted with the late Micheal Gingery, of this parish?

A. Yes, sir.

Q. Could he read or write?

354 A. I don't remember. I have had occasion to think about that for the last few days, and I have no distinct recollection about it.

Q. Do you know what was the value of Mississippi river cotton lands in this parish per acre in the year 1868?

A. Well, I have no personal knowledge, because I was not here in 1868.

Q. Had you any dealings with the people of this parish that year?

A. Yes, sir; and have had every year since I have lived in the parish. Even when I was away I had business here with some persons.

Q. Was your business of such a nature as to make you know the value of cotton plantations?

A. No, sir; I was not taking mortgages. I was in business in New Orleans in 1867; I was not in business in this country. I relied upon my previous information as to the value of plantations. I had no interest in the lands of this parish. I thought they were good lands—valuable lands.

Q. Are you acquainted with the "Raleigh" plantation?

A. Yes, sir.

Q. What is the character of that plantation?

A. It is considered a very good plantation.

Q. Is the quality of the lands of that plantation of average goodness?

A. Yes, sir; I regard them that way.

355 Counsel for def't objects to the testimony of this witness on the ground of incompetency and inadmissibility.

Reserving the benefit of these and all other legal objections, counsel for def't propounds the following cross-interrogatories:

By counsel for def't:

Q. Major Oliver, I will ask you whether or not you are acquainted with Thos. D. McCandless, recorder of this parish in 1868?

A. I am, sir.

Q. Have you known him intimately and long?

A. I have known him quite a number of years very intimately.

Q. Do you beleive, from your knowledge of Thos. D. McCandless as a man and recorder, that he would be guilty of a base and vile and corrupt appraisement of property to please anybody?

A. I do not, sir.

Q. Do you beleive he would collude with any one and lend the influence of his office to serve any one for a corrupt purpose?

A. I do not, sir.

Q. Do you beleive, if Thos. D. McCandless as recorder was called upon to make an inventory and to appoint appraisers, that he would endeavor to discharge his duties faithfully and make an apprais-ment according to his best knowledge and belief?

A. I do, sir.

356 Q. Did you regard him as a faithful, conscientious, and competent officer as recorder of this parish in 1868?

A. Yes, sir.

Q. Do you know Mr. Charles R. Egelly, of this parish?

A. I do.

Q. Have you known him long and well?

A. Yes, sir; I have known him several years.

Q. Do you know Judge J. W. Montgomery, of this parish?

A. Yes, sir.

Q. Have you known him well and long?

A. I have.

Q. Do you know W. G. Wyly, of this parish?

A. Yes, sir.

Q. Have you known him well and long?

A. Yes, sir.

Q. Do you beleive, from your knowledge of these gentlemen, they are capable of colluding and confederating together for the purpose of despoiling and robbing any person of their property?

A. I do not, sir.

Q. Do you beleive they would corruptly procure a base and vile appraisement of any plantation; that they would endeavor to corrupt an appraiser, to corrupt the officers of the law in the exercise of any scheme despoiling any person?

A. I do not.

357 Q. I will ask you, Major Oliver, if, among your business acquaintances of this parish, if it was not notorious that in 1868 there was great financial dejection over the country owing to the disasters of the crops of 1866 and 1868?

A. Yes, sir; I know that, although I was not a resident here; I know it from my business connections with the parish.

Q. I will ask you, from your knowledge of the country, if there was not a very gloomy time prevailing here after the disasters of the crops of 1866 and 1867?

A. Yes, sir; a very gloomy time.

Q. Was not the sheriff, with his deputies, actively engaged in making seizures in almost every direction at that time?

A. I cannot say; I was not here.

By Mr. SAUNDERS:

Q. You stated that you relied on your previous knowledge of the values of cotton lands in this parish when you were dealing with persons living in this parish from New Orleans; what, then, did you consider to be the average value of average lands in 1868?

A. Well, I don't know; I can't specify any particular sum of money. From my standpoint, I regarded them as amply valuable

to secure any advance made to the parties owning them; I don't know what the value was before the war; I don't know that
358 I could give any settled opinion as to how much they had depreciated by the effects of the war, but I considered them amply valuable to protect any one making advances to planters to raise crops on them.

Q. What did you consider to be the value of a plantation like the "Raleigh" plantation, containing about sixteen hundred (1,600) acres?

A. Well, I don't know at that time if I estimated it at all; I am sure I don't know; I had no interest in the Raleigh plantation; I was not advancing to any one on it.

Q. What would you consider the value of a plantation on the Mississippi river, in this parish, containing about sixteen hundred (1,600) acres of land of average quality in 1868?

Counsel for def't again repeats all his previous objections to the testimony of this witness, and insists that the witness has stated repeatedly that he did not reside in the parish; that he had no personal knowledge of the situation of the property or of its value during the year 1868 or prior to that time; that it is utterly incompetent for counsel for complainant at the present time, 1882, to ask this witness his opinion as to the value of property in this parish while he was living out of the parish and had no means of knowing its value. In view of the existing circumstances as they were in 1868, to wit, the "Raleigh" plantation without levees, the
359 lands a perfect wreck—grown up with bushes and no improvements, and then to ask this witness to place a value upon property surrounded as the Raleigh plantation was in 1868 is nothing but an effort to draw upon the imagination of this witness and to fill up this record with statements that are nothing but conjectures, the matters and things enquired of being wholly beyond the knowledge of this witness.

A. Well, in view of the neglect of the plantation caused by the war and their unprotected condition, of want of levees, I should consider, as an average, they were worth about ten dollars ($10.00) an acre, a plantation of that size, at that time.

Q. Would the average value be any less of a plantation of a thousand acres (1,000)?

A. No, sir; no less.

Counsel for def't reserves his objections to the competency, admissibility, and legality of the testimony of this witness.

And neither party offering and being ready to examine any other witnesses this day, I adjourned the examination herein ordered, in the presence of all parties, until Friday, July 21st, 1882, at the same place.

(Signed) J. B. BEATTIE,
Special Examiner.

FRIDAY, *July 21st*, 1882.

JAMES BEARD sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Beard, what is your age, your place of residence, and how long have you resided in this parish?

A. I am thirty-nine (39); I have lived here all my life, except during the war, when I was in the army.

Q. What has been your occupation?

A. Farming and planting.

Q. Have you been engaged in raising cotton?

A. Yes, sir.

Q. Are you acquainted with the cotton plantations in this parish on the Mississippi river?

A. Yes, sir; I am well acquainted with them.

Q. What was your occupation during the years 1866, 1867, and 1868?

A. I was planting.

Q. Were you planting in this parish?

A. Yes, sir.

Q. In what part of it?

A. The lower end of the parish.

Q. Mention the places on which you were planting in those years.

A. In 1866 and 1867 I was managing for my father.

Q. On what place?

A. On what is known as the "Eureka" place. In 1868 I was living on Mr. Foster's place, the "Bell" plantation then.

361 Q Did you rent lands in 1868?

A. I paid no rent; Mr. Green and myself ran the place; he furnished the land free of rent; I superintended it myself; we worked upon shares; we divided the expenses; each paid one-half the expenses.

Q. Was there a good crop made in the year 1868?

A. Yes, sir; a reasonably good crop.

Q. What rents were ordinarily obtained for cotton lands in this parish in the year 1868?

A. Well, they differed very much; some lands rented as low as a dollar ($1.00) an acre, and some, I think, as high as three dollars ($3.00) or four ($4.00) an acre, maybe higher.

Q. Are you acquainted with the Raleigh plantation?

A. Yes, sir.

Q. What rent is generally obtained for lands of equal quality with those of that plantation?

A. Well, really I don't know; most of these lands in 1868 was planted for monthly wages or hired labor or working on the one-half (½) system; there was not much land rented that year.

Q. What was the value of cotton lands of equal quality with those of the Raleigh plantation in the year 1868?

A. Well, sir, I hardly know; I know of but very little land being sold in 1868, but usually I think such lands were worth as much as fifteen dollars ($15.00) an acre, good lands.

362 Q. Had you been appointed appraiser to value the lands of the Raleigh plantation, at what sum would you have valued them?

A. Well, I think as much as fifteen dollars ($15.00) an acre.

Q. Did you know the late Micheal Gingery of this parish?

A. No, sir.

Q. Was the Raleigh plantation overflowed in 1868?

A. Partially.

Q. How much of it was overflowed?

A. About two hundred (200) acres.

Q. Did the overflow effect the building on the place?

A. No, sir.

NOTE.—Under the agreement of counsel, counsel for def'ts now makes objection to each and all of the foregoing questions and answers, the agreement being that objections shall be made at the conclusion of the depositions-in-chief, and not immediately after each and every question has been propounded. This agreement was designed to facilitate and expedite the taking of the evidence in this case.

Counsel for def't specially objects that under the issues presented by the replication to the pleas and exceptions all of this parole testimony is wholly inadmissible; that it is irrelevant to any of the issues pending in the case, and should not encumber the record; that the opinions and conjectures of this witness have no

363 bearing upon the issues of the case and are irrelevent; that no substantative fact testified to by this witness has any application to the issues involved in this controversy, and as a whole his testimony amounts to nothing but his opinions and conjectures and recollections.

Reserving the benefit of the foregoing objections and all other legal objections to the competency and admissibility of the evidence of this witness, counsel for def'ts propounds the following cross-interrogatories:

By counsel for def'ts:

Q. Mr. Beard, I will ask you whether or not about the year 1866 there was not a great many Northern capitalists coming down here to try the experiment of raising cotton with free labor by leasing plantations and cultivating them?

A. Yes, sir.

Q. What was the result of this experiment of these lessees in 1866 and 1867 in the neighborhood of Raleigh plantation, where they lived?

A. They lost a great deal of money.

Q. Did not the same disastrous results extend to the old and experienced planters who undertook to cultivate under the same system as those Northern capitalists as well as to the newcomers?

A. Yes, sir; I think so.

Q. What was the effect upon the country and the people — these losses; were the people very generally impoverished?

A. During the fall and winter of 1867 it was very hard to get along; there was no money in the country at all.

364 Q. I will ask you whether or not at that time the price of property had not very much depreciated when exposed to sale at public auction?

A. Well, I don't recollect about the sales, but I know property was almost worthless.

Q. I will ask you, Mr. Beard, if that Bell or Foster plantation was not regarded as a very fine plantation?

A. Yes, sir.

Q. I will ask you whether or not that plantation was so fortunate as to escape overflow in 1867 and 1868?

A. It was partially overflowed in 1867 from the overflow of the "Hawes-Harris" brake; the overflow of 1868 did not touch it.

Q. I will ask you about how much land was overflowed on that place—the "Bell" place—in 1867, as well as you can recollect?

A. About one hundred (100) acres, I think.

Q. Then do I understand you to say that the main part of the land on the "Fosters" place escaped overflow in 1867?

A. Yes, sir.

Q. Who did I understand you to say was cultivating the "Foster" or "Bell" place?

A. Green and Scanlan.

Q. Were they not operating upon a pretty large scale?

A. Yes, sir.

Q. Did they have most of that plantation under cultivation?

A. I think they had it all in.

365 Q. Was there a large amount of capital employed in the cultivation of that plantation during the period mentioned?

A. I think so.

Q. About how many acres do you think was cultivated during that period by these gentlemen?

A. About six hundred (600).

Q. Did I understand you to say that was considered a productive plantation before the war?

A. Yes, sir.

Q. What was considered before the war an average crop per acre on that plantation or on a plantation like it?

A. About a bale to the acre.

Q. Did they make a bale to the acre, or how much was produced per acre, as well as you remember, upon that plantation in 1866 and 1867?

A. Well, I don't remember; I could estimate it, probably, by thinking about it. I don't think over one-quarter (¼) of a bale to the acre, if as much as that.

Q. About what was the cost per acre, including everything, to cultivate that land in 1866 and 1867?

A. Well, I don't know how much; I could estimate it, possibly; I

should think, though, it would cost fifteen dollars ($15) or twenty dollars ($20.00) an acre, including cost of mules, forage, plows, gears, etc.

366 Q. I will ask you, Mr. Beard, whether or not that plantation made expenses during the years 1866 and '7.

A. It did not.

Q. Do you remember whether or not that plantation was under seizure in 1868—that is, the crop and mules?

A. In 1868? It was not.

Q. I mean in 1867.

A. I think it was in 1867; the latter part of 1867.

Q. Do you remember whether or not Capt. Hedrick, as sheriff, or his deputy was keeper of the property on the "Carondelet" and "Bell" places and the "Wilton" place in 1867?

A. I know he was not on the Carondelet, but I don't know as to the other two (2).

Q. I will ask you whether or not in the fall of 1867, owing to the disasters of the crops, a great many plantations, or rather the cotton and mules, were under seizure by the creditors of the people that were cultivating them.

A. I think they were.

Q. I will ask you whether or not, from the results of these disasters in 1866 and 1867, if most of these Northern capitalists who were lessees of these plantations in that neighborhood were not pretty thoroughly broken up and had to move out of the country.

A. Yes, sir.

367 Q. Were there many people who attempted to plant in that neighborhood in 1867?

A. There was a great many.

Q. How many bales were produced on the Bell plantation in 1866 & 1867, as well as you can recollect; how many bales?

A. I should not think over one hundred (100) bales.

Q. What number of bales ought that place to have made under proper management and a good season?

A. It ought to have made four or five hundred (400 or 500) bales.

Q. How many bales were raised on the Raleigh plantation in 1867?

A. I don't think over a hundred (100) bales.

Q. How many bales were raised on the Raleigh plantation in 1868?

A. Not over a hundred and twenty-five (125.)

Q. I will ask you if there was not a very gloomy outlook for the country after the disasters of 1866 and 1867?

A. Yes, sir; up to the summer of 1868.

Q. Did you ever see times bluer than they were after the failure of the crops in this parish at that time, 1868?

A. No, sir.

Q. When was the levee built on the Raleigh plantation and the Hawes-Harris place and the levees that protected that neighborhood?

A. The Raleigh was built in 1869. I don't know when the Hawes Harris levee was built.

368 Q. I will ask you, Mr. Beard, if property exposed for sale in 1868 at public auction for cash, if it would not, owing to the situation of the country, the financial condition of the people, sell at extremely low prices at a cash sale?

A. Well, I don't know positively about that; but I know times were very blue, but we had made good crops in 1868; better, I think, than we have ever made since.

Q. Were as high rents paid in 1868 as had been paid by these Northern capitalists in 1866 and 1867?

A. No, sir.

Q. I will ask you whether or not lands in 1866 and 1867 eligible for planting purposes could not have readily rented for from eight to ten dollars ($8.00 to $10.00) an acre?

A. Yes, sir.

Q. Could those same lands in 1868 after the disasters of 1866 and 1867 have rented for anything like that amount?

A. No, sir.

Q. I understand you to say, then, that after the disastrous results of 1866 and 1867 these same lands could not in 1868 have rented for anything like the price they obtained for them in 1867 and 1866?

A. No, sir.

Counsel for complainant, reserving all legal objections and exceptions to all of the foregoing questions and answers on the
369 cross-examination of this witness, propounds the following redirect interrogatories:

By Mr. SAUNDERS:

Q. Mr. Beard, what has been the usual production yearly of the Raleigh plantation since 1868?

A. Well, I hardly think it has averaged over half ($\frac{1}{2}$) to two-thirds ($\frac{2}{3}$) of a bale to the acre?

Q. About how many bales of cotton per year has it produced?

A. I don't know exactly; about five hundred (500) bales may be an average.

Counsel for def't, objecting to the questions and answers of this witness upon the redirect examination on the ground of irrelevancy and inadmissibility, propounds the following recross-questions:

By counsel for def't:

Q. Have you any personal knowledge of the matters last inquired of, or is that your supposition?

A. Only supposition.

Counsel for def't further objects to the answers of this witness on redirect examination on the ground that they are merely suppositions.

And neither party offering and being ready to examine any other

witnesses this day, I adjourned the examination herein ordered, in the presence of all parties, until Monday, July 24th, 1882, at the same place.

(Signed) J. B. BEATTIE,
Special Examiner.

370 *Sixth Day's Proceedings.*

LAKE PROVIDENCE, *July 24th*, 1882.

Judge J. W. MONTGOMERY sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Judge Montgomery, are you a resident of this parish?
A. Yes, sir.
Q. How long have you resided here?
A. Since 1856.
Q. Were you a member of the law firm of Sparrow and Montgomery?
A. Yes, sir.
Q. When did that firm begin and when was it dissolved?
A. I think it was about 1857 or '8. I think it was dissolved or it expired by a sort of *non usa*. He just dropped out of practice; there was no formal dissolution; he dropped out of the practice several years ago.
Q. Were you the attorneys of the succession of James Raley, deceased?
A. Yes, sir.
Q. When was that succession opened?
A. It was opened, I think—it was opened, I think, in 1858. I don't remember. I can't say positively. Records of the court will show.
Q. Judge Montgomery, was Judge Wyly ever indebted to you?
371 A. Not personally indebted to me; no.
Q. Were you ever indebted to Judge Wyly?
A. Me, personally? I never was.
Q. You are sure that Judge Wyly was never indebted to you?
A. I don't remember that he ever was in my debt; I don't now remember it.
Q. If he had been in your debt for as considerable a sum as ten thousand dollars ($10,000) you think you would recollect it?
A. I think I would recollect it.
Q. Have you ever had any considerable money transactions with Judge Wyly?
A. We have been practicing law together since 1857 or '8; we have had a good of business together in one way and another.
Q. I am speaking of personal transactions.
A. Yes, sir; as attorneys we have had a great deal of business together; I think I will say we have had personal transactions together.

Q. In what year was that?
A. I don't remember.
Q. About what time?
A. It has been several — ago.
Q. Was it since the year 1875?
A. I believe not.
Q. Did that transaction relate in any way to the purchase by Judge Wyly of the Raleigh plantation?
A. It was an outside transaction.

Q. Can you give me the year in which it occurred?

372 A. I don't remember; I never charged my mind particularly with it; I had no occasion to recollect it particularly; consequently I can't say.

Q. Can you tell me about what time it occurred?

Counsel for def't objects to this line of inquiry because the witness has stated that it was a transaction with defendant, W. G. Wyly, having no reference to *to* the purchase of the Raleigh plantation in 1868, but was an outside matter; defendant's counsel further objects that the plaintiff cannot cross-examine his own witness, nor can he in an effort to get legitimate testimony in the pending case call upon this witness for any other differences, or compromises, or settlements, or transactions that are of a purely personal nature that have occurred between this witness and the defendant, Judge W. G. Wyly, since the purchase of the Raleigh plantation by said Wyly, on the 20th day of October, 1868, said business referred to by said witness being entirely foreign and having no connection with that matter; the same is irrelevant and *res inter alios acta*.

By Mr. SAUNDERS:

Q. Can you tell about — time it occurred?
A. I don't remember about what time it was; I have not the sligh-est remembrance at all.

373 Q. Did the transaction to which you refer in any way grow out of or relate to the purchase by Judge Wyly of the Raleigh plantation?
A. No, sir; it did not.
Q. Did it refer or relate to the purchase by you of the "Airlie" plantation?
A. The Airlie plantation which I bought?
By Mr. SAUNDERS: Yes, sir.
The WITNESS: It had nothing to do with it. I bought the "Airlie" plantation for other parties.
Q. Are you not now the owner of a cotton plantation in this parish?
A. Yes, sir.
Q. What is the name of that plantation?
A. One of them is called "Deesona;" the other is called "Carondelet."
Q. When did you purchase Deesona plantation?
A. I think—I don't remember exactly, but think it was in '70 or '71.

Counsel for defendant objects to this question and to all other questions having reference to *to* the private business of the witness and having no reference to the purchase of the Raleigh plantation by the defendant Wyly as testified to by this witness, and counsel repeats that this line of inquiry can only be designed to encumber the record with useless matter of a private nature, and he protests that in a litigation between complainant and defendants it is
374 wholly incompetent and improper for counsel for complainant to enter into a general inquisition into the private affairs of citizens of the parish of east Carroll; that nothing that can be elicited from this and other witnesses having reference to their private business, and to the different plantations he owns, and to the purchase thereof, and to his financial standing, and all other matters of that kind are wholly foreign to this litigation, and they are not germane to any of the issues involved in this litigation, and that the litigation between the parties in this suit ought not to be availed of as an opportunity to hold an inquest over the affairs of citizens of East Carroll parish.

By Mr. SAUNDERS:

Q. What did you pay for that plantation?

Counsel for defendant objects on the ground of its being entirely irrelevent to the issues in this case.

A. I paid about twenty-five or twenty-six thousand dollars ($25,000 or $26,000).

Q. What was the agreed price per acre?

A. It was thirty-one dollars ($31) an acre and something over. It was a good long time ago, if you will allow me time to reflect.

Q. Did you make a cash payment?

A. I did.

Q. Do you recollect the amount of the cash payment?

375 A. No; I don't recollect; I don't remember. The deeds will show what the amount was.

Q. Do you remember how that cash price was paid?

A. I believe I do.

Q. How was it paid?

A. I paid it in a note which I had of Judge Wyly's; a note or some paper. I don't know whether it was a note or a draft.

Q. How did you acquire that note?

The WITNESS: From Judge Wyly?

Mr. SAUNDERS: Yes, sir.

A. In a transaction between him and me.

Q. How did Judge Wyly become indebted to you?

A. In an outside transaction.

Counsel for defendant objects, the witness having stated that this transaction between himself and the defendant, W. G. Wyly, having no reference to the purchase of the Raleigh plantation by defendant, but that it was an outside transaction of a private nature, is wholly irrelevent to the issues of this case; that complainant's

counsel cannot cross-examine his own witness and lug into this record matters that have no connections with the pleadings in this case.

Q. When did Judge Wyly become indebted to you, sir?

A. I have forgotten exactly when. It was about the time I purchased that place.

376 Q. How was it that he became indebted to you?

Counsel for defendant urges the same objection heretofore made.

A. It grew out of the outside transaction before alluded to, and in no way connected with the purchase of the Raleigh plantation by Judge Wyly.

Q. Do you decline to answer that question more fully?

A. Well, I don't care about going into my private matters. I simply say it had nothing to do with the purchase of the Raleigh plantation by Judge Wyly.

Q. I wish either to know the circumstances of that transaction or else to have your categorical refusal to answer this question.

A. Well, I decline to answer the question for the reason that I have already stated that it has no connection whatever with Judge Wyly's purchase of the Raleigh plantation. It was a transaction between him and me growing out of a different matter altogether, and long subsequent to his purchase of that place.

Counsel for complainant protests against this refusal, and says that it is not for the witness to determine upon the relevency of the evidence sought to be elicited from. Counsel avers that he has information that this transaction has a material bearing upon the issues in this case now pending; that it is important that the

377 court should know the dates and circumstances and amounts involved in the transaction between witness and Judge Wyly.

Complainant's counsel therefore again repeats the question, demanding specific information as to those facts and urges witness to reply fully thereto.

Counsel for defendant objects to any interrogatory or answer, as demanded, on the ground that they are wholly irrelevant to the issues in this case; that complainant's counsel cannot cross-examine his own witness, who has stated that the matters and things inquired of him have no reference to the issues involved in this case or to the purchase of the Raleigh plantation by W. G. Wyly.

Q. repeated. How was it that he became indebted to you?

A. I had a judgment against the estate of Raley; I bought the judgment against the estate of Raley and transferred it to Judge Wyly; that is the outside transactien referred to.

Q. What judgment was that?

A. It was a judgment of Belmont against the estate of Raley.

Q. When and from whom did you purchase it?

A. I purchased it at sheriff's sale.

Q. When?

A. I have forgotten; I don't remember exactly what time I purchased it.

Q. Was it before or after the war?

A. It was long after the war; long, long after the war.

378 Q. Was it against the particular property held by the administrator of the succession of Raley?

A. I don't remember.

Q. At what sheriff's sale did you acquire that judgment?

A. It was a sheriff's sale under a judgment which I held against James Raley's succession; Sparrow & Montgomery held the judgment. The judgment of Belmont against Raley was attached for their fees in recovering the same.

Q. Was the suit in which you purchased that judgment in the courts of this parish?

A. Yes, sir; in the courts of this parish.

Q. How much did you pay for that Belmont judgment?

A. I don't remember now; the papers would show.

Q. For how much did you sell this judgment to Judge Wyly?

A. For about twenty thousand ($20,000) dollars. The judgment, with interest, was, I think, about thirty thousand ($30,000) dollars.

Q. Did Judge Wyly pay you twenty thousand ($20,000) dollars for that judgment?

A. Yes, sir; he did; he gave me his notes for it, which was the same thing; I used them; he gave his notes without interest.

Q. Was this judgment against the succession of Raley?

A. Yes, sir; against the succession of Raley.

379 Q. Do you recollect when you sold that judgment to Judge Wyly?

A. No, I do not; I think it was about that time.

Q. About what time?

A. About the time I bought the Deesona place; I am not sure.

Q. Were those notes Judge Wyly gave you for that judgment ever paid?

A. I transferred them; I think they have all been paid.

Q. To whom did you transfer them?

A. I transferred them to D. C. Jenkins, as agent.

Q. As whose agent?

A. Agent of the heirs of Deeson.

Q. Were they paid to Mr. Jenkins?

A. The heirs collected the money, or rather he collected it for them; I know they got the money. I never seen the notes after they were transferred.

Q. Was the amount realized from these notes credited on the amount you owed the Deeson heirs for your purchase of Deesona?

A. I did not owe the Deeson heirs anything; I simply bought the property, on which there was a mortgage.

Q. Were the amounts realized on these notes credited on the amount you owed for the purchase of Deesona?

A. It was credited on the mortgage. There was a mortgage on the place when I bought the property. I bought the property
380 subject to that mortgage. There was a privileged owner of the property, who sold it to me. He had placed the mortgage on it.

Q. And the proceeds of Judge Wyly's notes were used to pay the mortgage which you assumed when you purchased the place?

A. I don't know that; all I know is this, I cannot say that the proceeds ever were used for that purpose. I know I transferred the notes for that purpose to pay for the debt which they held.

Q. You transferred these notes to those parties in payment of the mortgage resting on the place when you purchased it?

A. I did.

Q. And the assumption of that mortgage by you?

A. I did not assume it. I just took the property subject to it.

Q. Did you say that you sold this judgment to Judge Wyly just prior to your purchase of the Deesona place?

A. I don't remember whether it was just prior to or afterwards; I think it was just about the time I made the purchase. I think it may have been a little before, but I cannot say positively

Q. But it was about that time?

A. Yes, sir.

Q. The records of the conveyance office of this parish show that you purchased Deesona in 1870—December, 1870; was it about that time?

381 A. Yes, sir; it was about that time, but I cannot say positively.

Q. And it was about that time that you sold this judgment against the Raley succession to Judge Wyly?

A. Yes, sir.

Q. He paid you for that judgment, you say, twenty thousand ($20,000) dollars?

A. He did; yes, sir—that is, he gave me his notes, running four or five years, without interest.

Q. At that time was there any property in the Raley succession?

The WITNESS: Any property?

Mr. SAUNDERS: Yes, sir.

A. No, sir; not that I know of. Do you mean at the time I bought the judgment?

Mr. SAUNDERS: No, sir; at the time you sold it to Judge Wyly.

A. No, sir; I think not; I don't think there was.

Q. Judge Montgomery, did you know Micheal Gingery, of this parish?

A. Yes, sir; I knew him.

Q. Was he the appraiser to value the Raleigh plantation when the inventory was taken in the succession of Raley in Sept., 1868?

A. I believe he was; the records will show that.

Q. Could Micheal Gingery read or write?

A. I don't know whether he could or not; I heard he could not; I always thought he could myself; I was always under the

382 impression that he was a person of ordinary intelligence; I never had occasion to call on him to write.

Q. Who was the other appraiser of the Raleigh plantation when it was inventoried in Sept., 1868?

A. I believe it was Mr. Hays; I am not sure, but the records will show.

Q. At whose instance were these men appointed appraisers of that plantation?

A. I suppose by the recorder's; I was not present.

Q. Did you instruct the recorder whom to appoint as appraisers?

A. No, sir; I did not; I never instructed him.

Q. Judge Montgomery, did Mr. Egelly apply to you to have him appointed administrator of the Raley succession?

A. I don't think he did; I don't think he did; I think he was appointed; I selected him, or, rather, I wanted somebody to take the place, and he was willing to take it; that was all.

Q. Judge Montgomery, did you or did you not act as the attorney of Mr. Frederick W. Boyd in February, 1868, when Mr. Boyd, as administrator of the succession of Raley, enjoined the tax sale of the Raleigh plantation?

A. I have no recollection of doing so; I may have done so; I don't recollect; the records will show whether I did or not.

Q. Judge Montgomery, will you read that letter and state whether it is in your own handwriting?

(Handing witness letter, dated Floyd, La., September 14,
383 1865. After looking at the letter in question, witness replies:)

A. Yes, sir; I haven't the slightest recollection of the letter, but it is my handwriting.

NOTE.—Letter, marked Exhibit "C," offered in evidence on part of complainant.

Counsel for defendant objects to the introduction of letter referred to on the ground of irrelevancy.

Q. Judge Montgomery, will you examine that letter and state whether you wrote it (handing witness letter dated Floyd, La., July 27th, 1865, signed J. W. Montgomery)?

A. I don't recollect anything about the letter, but it is my handwriting.

NOTE.—Letter, marked Exhibit "D," offered in evidence on part of complainant.

Counsel for defendant objects to the introduction of letter referred to on the ground of irrelevancy.

Q. Judge Montgomery, was it at your advice that Mr. Egelly applied for an order of sale on 17th September, 1868?

A. Yes, sir; I had it done as a representative of the creditors, and I myself had a judgment of my own.

Q. Did you draw up the petition which Mr. Egelly signed?

A. I suppose I did; I know he signed a petition; that is something that used to be done here once upon a time.

384 Q. Were you Mr. Egelly's attorney?

A. I was the attorney of the estate.

Q. At the same time as Mr. Egelly filed his petition to obtain an order of sale there was filed a seperate petition, called a petition of intervention, on behalf of the Citizens' Bank of Louisiana; do you remember who drew up and filed that petition?

A. I suppose it must have been me; I don't know, unless I could see who it was signed by; it would show that, as a matter of course—that is, it would show who drew it up; I could then tell, as a matter of course, whether I did it or not; I have no recollection of doing so.

Q. Judge Montgomery, I wish you would reflect before answering this question: Were you requested or authorized by the Citizens' Bank to draw up that petition?

A. I had no special request; I did it as an attorney having claims to collect; I represented quite a number of the creditors, and I may have put the bank in as one of their number just as I would any other creditor; I always did those things without consulting the clients at all when I had claims for collection.

Q. You merely, then, took that course in a number of claims you had against the succession?

385 A. Precisely; I allways considered it my duty to use the name of my clients whenever necessary in an effort to collect their claims without directly consulting them.

Q. Judge Montgomery, was there any opposition to the appointment of Mr. Egelly as administrator of that succession on the part of any of the creditors?

A. I don't remember whether there was or not.

Q. Was there any opposition made to this appointment by the heirs of the succession?

A. I don't remember; I beleive there was. The records will show what occurred at the time; the records will show all of that. I rather think there was, but I am not positive; I might be mistaken. I have not seen the papers since they were filed.

Q. Were you not the attorney of the succession of James G. Carson?

A. Yes, sir; I was.

Q. Did that succession have any claim against the succession of Raley?

A. I don't remember now whether it did or not.

Q. Was not James G. Carson testamentary executor of Mr. James Raley's sucession?

A. He was.

Q. Do you remember whether the commissions due Mr. Carson as executor were ever paid him?

A. I don't remember whether they were or not. He had their property in his hands a good while; he had the use of it; he

386 may have paid himself in that way. I do not know. He had their negroes during the war, worked them and used the crops. He might have paid himself then; I do not know.

Q. Were you not the attorney of James Carson as executor of James Raley's succession?

A. Yes, sir; I was the attorney; I was employed by him as attorney of the estate.

Q. As such attorney, did you not file an account of the administration of Carson?

A. Yes, sir.

Q. That account was filed under your supervision?

A. Yes, sir. I filed that as the representative of James Carson, executor of the estate of Raley.

Q. Do you remember whether the estate of Carson was put down on that account as a creditor of the succession of Raley?

A. I don't know; I have not seen the account since it was filed.

Q. Then I understand you to say that you were the attorney of the estate of Raley when that succession was first opened?

A. Yes, sir; and remained so until Dr. Carson's death. I was not the attorney after Dr. Carson's death.

Q. You were the attorney of that succession during the administration of Mr. Egelly?

A. Yes, sir.

Counsel for defendant objects to the relevancy and admissibility of all the foregoing questions and answers. It is also under-
387 stood that counsel *that counsel* for defendant has reserved his objections to the competency and admissibility to the testimony of this witness as heretofore urged. He specially objects to all the opinions and statements of the witness and to the documents filed as wholly irrelevent and not responsive to the issues of this controversy, as they are matters of *res inter alios acta* and ought not to be admitted to assail the record titles of the defendant.

Counsel for defendant specially objects to the method of examining this witness and to the species of cross-examination to which he has been subjected on the ground that the witness is a witness for complainant; that it is not competent for complainant to gainsay any of his statements or enter upon a line of cross-interrogatories of this witness for the purpose of impeaching his testimony; nor was it competent for complainant, after having drawn from their own witness emphatic statements of the matters and things inquired of having no reference to the purchase of the Raleigh plantation by W. G. Wyly, that the transactions between the witness and W. G. Wyly in reference to the Belmont judgment are matters occur-ing subsequent to the purchase of said Raleigh plantation and growing out other transactions wholly distinct and seperate therefrom; that the efforts of complainant's counsel to
388 enter upon minute inquiry and to sift that transaction can have no other effect than to amount to an effort to cross-examine their own witness with the view to impeach his emphatic and positive sworn statements; that the object of said questions, if any, was designed as a means of obtaining from the witness by a process of cross-examination some statement or statements, if possible, that might be more favorable to the complainants than if they had chosen to pursue the usual direct method of examining in chief their own witness.

Reserving these and all other legal objections to the competency and admissibility of the testimony of this witness, counsel for defendant propounds the following cross-interrogatories:

By counsel for defendant:

Q. I will ask you, Judge Montgomery, whether about the time

of this sale of the Bellmont judgment to W. G. Wyly it was not understood that a large claim by the succession of Raley against the Government of the United States for cotton captured during the rebellion was not pending in a Court of Claims at Washington or was about to be instituted with great prospect of success?

A. I heard so, but I have no knowledge whether such suit was instituted or not. I heard at the time that there was such a suit. I don't remember who I heard it from, but I just heard it.

389 Q. I will ask you whether it was not understood that that claim amounted to upwards of one hundred thousand ($100,000) dollars?

A. I don't remember ever hearing any specific amount mentioned. All I know is it was considered for a large amount of cotton that they were suing for in the United States Court of Claims, but I suppose it was for cotton, as all those suits about that time were for cotton.

Q. I will ask you if it were not understood that this claim was based upon the capture by the Federal army of cotton and other property on the Raleigh and Carondelet plantations belonging to the succession of James Raley in the parish of Carroll, La.?

A. I heard so, but know nothing about it myself.

Q. I will ask you, Judge Montgomery, whether or not you were the attorney for the succession of James Raley during the period that Frederick W. Boyd was acting as dative executor?

A. I don't remember; if I was the records will show if I signed any paper.

Q. I will ask you whether Pilcher, Goodrich, and Montgomery or some other attorneys were not the legal advisers of Frederick W. Boyd, dative executor of the succession of James Raley?

A. I think Mr. Goodrich was; I don't know positively; my recollection is that Mr. Goodrich was.

390 Q. Do you recollect in 1866 or thereabouts to have brought suit against Frederick W. Boyd, styled creditors against the succession of James Raly, No. 5104, or some such suit title, asking for a sale of the property to pay the debts and to pay the mortgage; that if there was any overplus of the proceeds that they be distributed *pro rata* among ordinary creditors?

A. I have no recollection. The records will show. After having a copy of the judgment exhibited to me, I now remember that I filed a paper such as that inquired of.

Q. Did you get judgment ordering sale on the 13th of October, 1866, of the Raleigh and Carondelet plantations?

A. I got such a judgment as is here described. I got judgment in favor of various creditors against the succession of Raley; as to particulars of the judgment it will speak for itself.

Q. I will ask you, as well as you can remember, who were the attorneys of Frederick W. Boyd as dative executor of the succession of James Raley?

A. I don't remember any but F. M. Goodrich; I don't remember of any of the others taking part in the matter.

Q. Well, now I will ask you, Judge Montgomery, whether or not

you made an earnest effort to obtain the sale of the Raleigh plantation through this judgment of the court in 1866 and whether
391 or not from some cause you were prevailed upon by Frederick W. Boyd or his representative, Mr. Goodrich, to delay the sale of this property from some cause?

A. I have forgotten; I cannot say, though there was something that prevented the sale, I think. There was something that prevented the enforcement of the judgment against the Raley succession. I have forgotten now what it was.

Q. I will ask you whether Frederick W. Boyd faithfully administered upon that property during the period that he was acting as dative executor of the succession of James Raley, deceased?

A. I don't think he did.

Q. I will ask you, Judge Montgomery, whether or not he neglected to look after the interests of the creditors, took proper steps to wind up the estate, and to pay them?

A. I don't think he did. He had possession of the place in 1866 and '7. He never pretended to account for anything. He just pocketed everything he could get hold of and put out of the State, and never been back since to reside. That is my reason for believing he never did his duty to the creditors.

Q. Did his wife reside with him here in this parish?

A. I don't think she has ever been here to the parish to reside. She did not reside with him.

392 Q. Whilst he was dative executor was he not here temporarily, or was he here as a regular citizen?

A. Well, I think his residence here was only temporary. He would come into the parish and then go back.

Q. I will ask you, Judge Montgomery, whether, since the war, or any time, has Frederick W. Boyd been a permanent resident of this parish?

A. I don't think he has. I am quite certain he was not a resident. If he had been a resident I never should have proceeded to oust him. He was out of the State all the time. I never could see any person on the place to serve process on after 1867.

Q. Do you know whether he left any known agent to represent him in the parish?

A. I don't think he left any such agent as I could have had a process served on.

Q. I will ask you, Judge Montgomery, about the time Frederick W. Boyd left the parish permanently in 1867, if you represented a large number of claims against the estate of James Raley?

A. I did.

Q. I will ask you whether you had not been holding these claims for several years and been very anxious, in the interest of your clients, to have the estate settled up and these large amounts in your hands paid?

A. I don't remember how long I had them in my hands. I had a personal claim which I was more anxious to have paid than the others. It was a previliged claim. It was a claim against the estate contracted by the executor.

393 Q. I will ask you whether or not, besides your own claim, you held a great many claims against the estate as attorney for various creditors?

A. I did.

Q. I will ask you why it was in 1868 you proceeded to cause Frederick W. Boyd, dative executor, to be destituted and to have an administrator appointed to wind up the estate?

A. I did so because Boyd was not a resident of the State. He had abandoned his residence in the State, gone off, and I had no means to serve a process on him. There was no one to represent the property; there was no one on whom to serve processes, and I considered the estate vacant, non-represented.

Q. Would you have been able to have proceeded to force a sale of the property and settlement of the estate without having destituted Boyd, dative executor, and causing an administrator to be appointed?

A. I could not have done so without having somebody to represent the estate. He did not represent the estate—that is, he was not in the State. The property was just lying there with nobody in possession of it.

Q. Did I understand you to say that in 1867 that Frederick W. Boyd, dative executor, abandoned his trust as dative executor and left the State permanently?

A. I believe the Raleigh plantation was overflowed in 1867.

394 It was necessary to have some one appointed to look after things, as they were all going to ruin; it was necessary to have some one to look after the estate.

Q. Did I understand you to say that he went off out of the State without rendering any account, to all intents and purposes abandoning his trust as dative executor of the estate?

A. Yes, sir.

Q. Did I understand you to say you, in your own right and as representative of a large number of creditors having large interest at stake in the suc-ession, that you had an interest in having that estate administered upon?

A. Yes, sir.

Q. I will ask you whether or not it was your duty as attorney to cause the succession to be represented—have some one appointed to represent it?

A. I thought so, and that was my uniform practice in similar matters.

Q. Was it possible for you to have proceeded, by rule or otherwise, to compel this delinquent executor to file his account and discharge his duty, in view of the fact that he had left the State and abandoned his trust?

A. I could not; there was no representative here; he had gone away and there was nobody to serve process on.

Q. I will ask you whether the surety on his bond, Wm. Deeson, at that time was a good and solvent security?

395 A. I judge that he was insolvent, because it was in 1867 or '8 that he went into bankruptcy.

Q. I will ask you when Deeson died—about what time—do you remember?

A. I believe it was in '68. It may have been the latter part of '67 or '68; in the latter part of '67 or early part of '68; I am not positive when. I know he died before he got his discharge in bankruptcy. He filed his papers there, but never got a discharge.

Q. I will ask you whether when you began those proceedings to discharge Frederick W. Boyd, dative executor, and to cause the appointment of C. R. Egelly, or some one else, whether that was the only remedy left for you in order to compel the estate to be wound up and to secure the creditors something of what was due them?

A. Well, I think so; that was my legal opinion about the matter.

Q. Did I understand you to say that Frederick W. Boyd, dative executor, during the two or three years he administered the estate, failed to file his provisional account?

A. Yes, sir.

Q. Or to make any showing of his *jestion* on the estate?

A. He never did.

Q. Do you remember whether or not a rule was taken against him by Craig and Irwin through their attorneys, Duncan and
396 Newman, to compel him to file an account, and if he had sufficient funds to pay their debts; if not, that the court ordered that sufficient property be sold to pay them. Do you remember whether such a rule was taken?

A. I have no personal knowledge of it, but I think the records will show. I think the records will show it.

Q. I will ask you what was the condition of the country in 1868, after the overflows and disastrous failures of the crops in 1866 and '7? What was the financial condition of the country?

A. There was great depression here; no money in the country; money was very scarce. Everything in the country was very gloomy at that time at the future prospects. I will state if 1868 had been the same as 1866 and '7 that the whole country would have been abandoned where it was overflowed. The levees were all down generally and the crops had been as bad a failure as I ever saw.

Q. I will ask you, Judge Montgomery, if the country about the time Frederick W. Boyd abandoned his trust—if the country was not almost in a bankrupt condition?

A. I believe it was. People had lost terribly in '66 and '67 trying to make crops with free labor. The labor was demoralized—terribly so.

397 Q. I will ask you whether the levees on the Raleigh plantation was down in 1868, when this sale took place.

A. Yes, sir; I think it was.

Q. I will ask you whether or not that plantation was virtually abandoned, so far as a vestige of the improvements or cultivation was concerned. I will ask you if it was not a virtually abandoned estate.

A. That is my remembrance—that it was.

Q. I will ask you, after the executor had fled from the country,

whether the prospect of the creditors being paid out of the proceeds of the sale of that plantation did not become very gloomy.

A. Well, I think they did.

Q. I will ask you whether or not you and other preferred creditors were not anxious to make what money you could out of the estate, which seemed at that time to be in a desperate situation.

A. I will answer that, yes, sir.

Q. I will ask you whether, in October, 1868, there was not a disposition among a great many people here to abandon the country and go to Honduras or some other place.

A. Well, I know that for two or three years there was a general disposition of that kind felt. People had no confidence in the labor. There was no money in the country. Planters had no money beyond their places.

Q. I will ask you whether or not, in 1868, most of these Northern people who had brought money down here were not broken up,

398 left, and gone off.

A. I believe that I know that all lost money. I am satisfied that in 1866 and '7 there was not a man in this parish who made a red cent, but that every man who undertook to plant lost heavily.

Q. I will ask you, Judge Montgomery, if, in 1868, there was not a change of government taking place, and if the colored man was not an important factor in the element of government.

A. Yes, sir; I believe that was the case.

Q. What impression did the result of the constitutional convention of '68 and the organization of the Warmoth government—what impression did that produce among the old citizens and the property owners of this parish?

A. Well, the impression—there was a feeling of great disappointment as to the future of the country. The negro was invested with power over the white man, and most of the white people thought that they would have to abandon the country—that nothing but their poverty kept them here.

Q. Was there not, about the month of October, 1868, a great impression felt among the old citizens and property holders of this parish that this State would be virtually Africanized?

A. Yes, sir; that was true.

Q. Were there not gloomy anticipations as to the future financial condition of the State?

A. Yes, sir. As I stated, the value of property here was

399 down to little or nothing *here* then, and they looked forward to its being worse.

Q. I will ask you, Judge Montgomery, if, when you began proceedings to wind up the Raleigh succession, that you and other citizens were not greatly distressed, and whether or not a feeling of gloom did not pervade the country in view of the probable election of Grant in the fall, and if they did not believe the county would be given over to the radicals?

A. Yes, sir; that is a fact.

Q. I will ask you whether or not there was a general disposition

among the people, in view of the condition of the country, together with the experience of a few years past, that if the Warmoth government was inaugurated there was little to be hoped for Louisiana, and if there was any great benefit to be derived from property in this State under this condition of things?

A. I think so, for the taxes was eating up the property as fast as it could.

Q. Didn't the people beleive generally that what little could be made by free labor would be taken from them and that high taxes would be the result of the extravagance and recklessness of the Warmoth government?

A. Yes, sir; I think that was true.

Q. I will ask you whether or not, in 1866, the experiment made of planting with free labor was not a success, and that the
400 people were afraid to be taxed so high that they could not pay their taxes upon their property, that they thought of leaving the country?

A. Yes, sir; I think that was true, that the taxes were eating up the property.

Q. I will ask you, Judge Montgomery, whether or not when you caused the succession of James Raley to be reopened by the appointment of Charles R. Egelly administrator, and when, in the interest of the creditors, you caused the property to be sold to pay the debts, whether or not you acted in good faith and for what you thought was for the best interests of all parties?

A. I certainly did.

Q. I will ask you whether or not this property sold at auction sale for cash any lower than many other valuable plantations were selling for at auction sale before and subsequent to that sale?

A. It brought as good a price as was realized at public sales. I don't know that any place sold any higher. I don't know of but one or two that sold higher than that did. There was a general disposition among people not to want property. It was not desireable to want to own real property. People only bought property to save what little they could and to collect their debts. As an evidence of this I saw the sheriff offer good property, without the benefit of ap-
prais-ment, I think, on twelve months' credit. He asked ten
401 cents an acre and could not get it. Nobody would *have* bid anything on it. You could not have given it to them.

Q. I will ask you whether the impression that future taxation and reckless and extravagant legislation in the country did not deter people to some extent from investing in real estate?

A. I think it discouraged them; the result of that and other causes was there was no confidence in the future of the country. I was affected in the same way myself; I did not know what was to become of us.

And neither party offering and being ready to examine any other witness this day, I adjourned the examination herein ordered, in the presence of all parties, until Monday, July 24th, 1882.

(Signed) J. B. BEATTIE,
Special Examiner.

Sixth Day's Proceedings.

MONDAY, *July 24th*, 1882.

Cross-examination of Judge J. W. MONTGOMERY resumed.

By counsel for def't:

Q. What was the condition of the Raleigh plantation at the time you, on behalf of the creditors, applied for an order of sale of the property?

402 A. Well, as I remember the place, it was in dilapidated condition. The levees were all down, and the houses were mostly gone and the place liable to overflow.

Q. Was it yielding a revenue?

A. I think not.

Q. Were the ditches and other improvement- upon the place out of repair?

A. As I have just stated, the houses were in a delapidated condition; I think a great many of them gone, and the ditches were all filled up by the overflow.

Q. Did you notice any fencing upon the place?

A. There was no fencing, as I remember.

Q. The land was laying out?

A. Yes, sir.

Q. I understand you to say the land was laying out?

A. Yes, sir.

Q. Were any hands on the place?

A. No, sir; not as I know of; it was not cultivated.

Q. Where was Frederick W. Boyd dative executor in 1868? Was he faithfully administering upon the plantation, or had he abandoned it, and was he permanently living out of the State?

A. Boyd? I don't where he had gone off to; he had gone off out of the State somewhere; he was out of the State; I don't know positively where he had gone to, but it occurs to me he was in

403 Mississippi; he had abandoned his trust—gone off and left the property there unrepresented; he did not have any agent; consequently I proceeded to destitute him by the appointment of another representative of the estate.

Q. I will ask you whether or not the Raleigh plantation was in such a condition in 1868 that it required some one to administer upon it, to make repairs and improvements, and pay taxes, and were not the creditors anxious to wind up the estate?

A. I believe that to be a fact; I, as one of the creditors, I know, was anxious.

Q. Were you a succession creditor or a creditor of the deceased?

A. I was a creditor of the succession.

Q. For about how much?

A. Well, it was in the neighborhood of about six thousand dollars ($6,000).

Q. Was Frederick W. Boyd dative executor at the time you got that judgment?

A. Yes, sir; he was dative executor at that time; he had not been discharged.

Q. I will ask you whether or not the Raleigh plantation was in such a condition in 1868 that *that* it required some one to administer upon it, to make improvements and repairs, to pay taxes, and either to lease it out or sell it—to make some disposition of it?

A. I think I have answered that fully. Yes, sir; I believe that to be a fact from knowledge of the facts at the time.

404 Q. Did Frederick W. Boyd, dative executor, ever file an account of his administration; did he pay the debts or perform the usual customary duties of an administrator, or how did he discharge his trusts?

A. Well, he never did any of the things required of him; he discharged his trusts by using the property in 1866; I think it was renting it out, I suppose, and just pocketing the proceeds without rendering any account or making any account. He cultivated the place in 1866—had charge of the place in 1866; he abandoned the place in 1867; went off without rendering any account for the time he had the place, in '66; the place was overflowed in '67—early in March, '67; I think the improvements have been made since then.

Q. Did it yield any revenues that you know of in '66 — '67?

A. Not that I know of.

Q. Did I understand you to say that the improvements on the place since 1867, at the time it was abandoned by Frederick W. Boyd, were in a delapidated condition and the improvements put on it after Oct., 1868, when it was sold to W. G. Wyly; that he subsequently repaired the place after 1868; that it was re-established by W. G. Wyly?

A. That is the fact.

Q. I will ask you, Judge Montgomery, whether Frederick W. Boyd, dative executor of James Raley, deceased, ever came back to the parish to resume the duties of his office or whether he

405 ever sought so resume the duties of that office after he abandoned it, in 1867, by moving out of the State?

A. He did not.

Q. When did Frederick W. Boyd next come into the parish temporarily; how long since?

A. I saw him here, I believe, a couple of years ago.

Q. Had he pretended to assume any rights or claim to act as executor when he returned to the parish two years ago?

A. I don't know that he did; he did not, to my knowledge. I never heard of his doing so.

Q. How long did he stay here after he returned to this parish?

A. I suppose he was here about a month or six weeks, maybe.

Q. Did he make his home here or pretend to become a citizen of this parish?

A. No, sir; he was here temporarily.

Q. Do you think that he had any intention to remain here when he came to this parish the last time two years ago?

A. No, sir.

Q. Do you think if he had any intention to remain here and as-

sume the duties of his office you would have known it after he came back to the parish two years ago?

A. Most undoubtedly I should. I was the attorney of the estate and suppose, of course, if he intended any such thing he would
406 have come to me first one, I being the attorney of the estate; after Dr. Carson's death I never was the attorney any more until Mr. Egelly was appointed to represent the estate.

Q. You mean you were not the regular attorney of the succession?

A. Yes, sir; I was not the regular attorney of the succession.

Q. Do I understand you to say you were not regularly employed as the attorney of the succession while Frederick W. Boyd was acting as executor—that is, from 1866 to 1868?

A. I had no connection with the estate as attorney during the time Boyd had it, but I am told that I filed documents under special employment.

Q. I will ask you if you were ever paid anything by Frederick W. Boyd, dative executor, for any of the services rendered by you?

A. Not a cent.

Q. You were not his feed counsel or his counsel under pay?

A. No, sir.

Q. Who was his legal advisers, as well as you can recollect?

A. My recollection is that F. M. Goodrich was his adviser and attorney. Mr. Goodrich was representing him at the time; he represented the heirs at the time. I know we talked about some matters of the estate. I filed some papers. I don't know what now.

Q. Were you the counsel for Frederick W. Boyd when he opened the succession?

407 A. No, sir; I was not; never was his counsel; it strikes me he just filed his own papers.

Q. When Mr. C. R. Egelly, administrator, was appointed in 1868 did he have any funds on hand to pay the debts of the deceased or to pay court charges, clerk's costs, and lawyer's fees?

A. No, sir; he hadn't a cent.

Q. What were the available resources or means in the hands of C. R. Egelly, administrator, with which to pay the debts and wind up the estate?

A. There was no means except that plantation; that was all.

Q. Did he have on hand any funds with which to pay for taking of inventory and opening of succession, to pay the taxes, or even as much as debts of deceased?

A. He did not.

Q. I understand you to say at the time he himself took charge of this plantation he had nothing that he could make available except this plantation down here, which was in a dilapidated condition, which you have described?

A. He had not.

Q. Under the circumstances was it necessary to provoke a sale of that property at the time *the* this sale was provoked under Mr. Egelly's administration?

A. Undoubtedly it was; I was anxious to collect my debt under my judgment.

408 Q. What was the general condition of the succession of James Raley in 1868, when C. R. Egelly, administrator, caused the sale of the Raleigh plantation?

A. I have already stated the estate was in a very bad condition; the property had greatly depreciated in value and was getting worse every day; the levees were down and it was liable to overflow; had a bad caving front; the bank was caving badly. I did not regard the property at the time the sale took place as valuable for those reasons. When I saw the apprais-ment made by the appraisers and from my knowledge of the facts, especially as there was not a stick of timber on the plantation, no fencing, I thought it best to let the property go—let the property be bid off at its appraised value; I was not willing to bid the property in myself, although I had the right to do so, even at the appraised value, because I regarded such property as almost worthless; that was the general estimate placed on the property by the people of this country; some of the best judges of property in the country who had been large property holders talked freely with me about the condition of the country, and the sentiment was almost universally expressed that the outlook for the future was a very despondent one in consequence of the then condition of the country; many of them did not at that time estimate property as having any value scarcely in the condition that property was at the time. As a lawyer, I

409 provoked a great many sales of property in the country. Property, in the condition of the country at that time, could not be sold except at a very insignificant sum—say from fifty cents (50c.) to two dollars ($2.00) to three dollars ($3.00) an acre. Most of the property in the plantations in the overflowed country were selling for about one dollar and a quarter ($1.25) an acre, which they have been appraised at ever since, pretty much. I remember distinctly buying a plantation at a probate sale. The place had been very valuable—estimated at forty or fifty dollars ($40 or $50) before the war. I bought it myself for seventy-five cents (75c.) an acre.

Q. I will ask you if the value of all these plantations on the Mississippi river were not constantly liable to great fluctuations as to value after a disastrous season or general overflow? Did the property not decrease frequently to a nominal value, while in a few years afterwards one or two good crops and the country had escaped overflow—does not the value of the property increase enormously under this more favorable condition of things?

A. Yes, sir. I answer it in the affirmative, but will state the property here has no value—no market value—since the war. There has been no such thing as a fixed market value of real estate here since the war. Prices are generally just regulated by the caprice of parties at the time of the sale.

410 Q. As an illustration of this, Judge Montgomery, I will ask you if this Wilton plantation of Col. Buckner's is not a striking illustration of the fickleness of the value of cotton plantations since the war?

A. I think it is.

Q. I would ask you whether that property in January, 1869, did not sell for almost a nominal price?

A. At public sale it sold for almost a nominal price, although there were a number of people attending the sale.

Q. I will now ask you if that plantation two years ago, before the recent overflow, would not have commanded the price of thirty or forty dollars ($30 or $40) an acre, being an exceedingly fine plantation?

A. I suppose it would have commanded twenty to thirty dollars ($20 to $30) an acre.

Q. Do you believe now, Judge Montgomery, that the Wilton property would sell under the hammer for any more than it did in '69, considering the ravages of the present overflow?

A. I don't think it would. I don't think it would sell for any more unless the heirs or some parties who were interested would bid it in. I am satisfied that outsiders would not give that for a plantation in that condition. I think it cost Col. Buckner very nearly the value of that land to get it in condition.

411 Q. Do I understand you to say, then, by filling up the ditches and by the carrying away of fences and other improvements destroyed—that in repairing the plantations—in rebuilding these plantations, it requires the expenditure of a large sum of money to make them available?

A. Yes, sir; I believe that to be true.

Q. I will ask you whether you know the "Out Post" plantation?

A. Yes, sir; I know the Out Post plantation.

Q. Was that considered a fine plantation before the war?

A. Yes, sir; it was considered a fine place, and made a large amount of cotton.

Q. I will ask you whether or not it was occupied and cultivated after the war?

A. I don't remember whether it was cultivated immediately after the war or not.

Q. I will ask you whether, from your knowledge of that plantation before the war and since—whether you regard the Out Post plantation as valuable as the Raleigh plantation?

A. Well, now, both plantations, taking them together, I would rather have the Out Post plantation than the Raleigh place, considering the fact, and particularly for the reason that Raleigh place had no timber on it; that is one reason for my estimating it as a very poor place.

Counsel for defendant here exhibits to witness a deed of the Out Post plantation and asks him to look at it and state whether or not the instrument presented to him is the deed of that plantation.

412 The WITNESS: Yes, sir; that is the deed of that plantation.

Q. When was that deed made?

A. It was made, as shown by the deed, on the 14th of October, 1868.

Q. I will ask you how much was the price of the sale, as shown by the deed?

A. It was a small amount; two thousand and ten dollars ($2,010); I am governed by the deed; it was a very small amount, sir.

Q. How many acres in the tract was sold—how many acres in that tract?

A. It was a very large tract, containing three thousand (3,000) cares, more or less.

Q. When that property was sold what was understood to be its market value at that time?

Counsel for defendant offered in evidence deed shown to witness and before referred to, filed, and marked Exhibit "E."

Q. I will ask you, Judge Montgomery, whether you know the "Erie" plantation, called the Balfour plantation?

A. Yes, sir; I know it; I know it now.

Q. How far is that from Lake Providence?

The WITNESS: You mean the town of Lake Providence?

By COUNSEL for DEF'T: Yes, sir.

A. About three or four miles.

Q. Do you remember the size of that tract?

A. It was a large tract, containing sixteen hundred and thirty-eight (1,638) acres.

413 Q. I will ask you whether it was considered a valuable plantation before the war?

A. Before the war it was considered a valuable plantation; I don't suppose before the war the owner would have sold it for seventy-five or eighty dollars ($75 or $80) an acre.

Q. I will ask you whether that plantation was affected by seapage water or liable to be injured by caving bank or annoyances of that kind?

A. No, sir; it is a place a couple of miles back from the river, bordering close to Lake Providence, the town of Lake Providence.

Q. Was that plantation affected by the overflow of '67?

A. I don't think it was.

Q. Have you ever known that plantation to be overflowed since the war?

A. No, sir; it has not been overflowed.

Q. Has not that plantation been considered one of the most desirable and eligible plantations in the parish of Carroll?

A. Yes, sir; it was.

Q. Do you know of any that is superior to it, taking all things into consideration?

A. Yes, sir; I know of one or two plantations that I regard as superior to it.

Q. I will ask you whether or not that plantation is not fully as valuable or more so than the Raleigh place?

A. Oh, yes, sir; I think it is. I think it was a more valuable plantation even before the war than the Raleigh place.

414 Q. Do you consider that plantation greatly more valuable than the Raleigh plantation at the present time?

A. I think I would not give it for two such places as the Raleigh plantation.

Q. Did I understand you to say that that plantation has been exempt from caving banks?

A. Yes, sir.

Q. Judge Montgomery, was the Erie plantation belonging to the Balfour succession as valuable as the Raleigh plantation at that time?

A. I think it was regarded so; it was generally regarded about the same—that is, I say, before the war.

Q. No; I mean since the war?

A. This place out here, I think, was much more valuable plantation.

Q. Look at the certified copy of the sale of that plantation, which you have in your hand; state when it was sold, what was the price, and to whom it was sold.

A. I see the deed calls for about three dollars ($3.00) an acre. The sale seems to have been made on the second of February, 1869; it was a public sale, if I remember right; I see the deed also speaks of it as being a public sale. It was sold, if I remember rightly, to Louis G. Balfour.

Counsel for defendant offers in evidence certified copy of deed referred to, marked Exhibit "F," to which counsel for com-
415 plainant objects — to the introduction of said document on the grounds of its irrelevancy.

Q. Judge Montgomery, are you acquainted with the old Jonathan Morgan place?

A. Yes, sir; I have known the place for a great many years.

Q. Where is that plantation located—near what plantation?

A. It is in this parish, lying just below the Raleigh place, adjoining on the river.

Q. Do you remember the size of that plantation?

A. Well, it was a large plantation; I think, perhaps, two thousand (2,000) acres in it; I don't remember distinctly about that.

Q. Was it as valuable a plantation as the Raleigh plantation?

A. Yes, sir; it was.

Q. Will you describe the relative value of the two plantations—relative intrinsic value of the two plantations—in 1868, as well as you can?

A. I can only give my opinion as to how it was generally regarded; as to giving its intrinsic value I would have to be appointed as expert and go and examine the place. In 1868 there was no comparison, in my judgment, between the value of the two places, because the levees were down at Raleigh; everything was in a bad condition. The other place was all cultivated during the war; the improvements kept up. A couple of ladies staid there who
416 married a couple of Northern men, who made crops there and managed it.

Q. Who were the owners of that plantation?

A. I think Mrs. Scanlan and Mrs Green.

Q. Who were these ladies?
A. They were the daughters of old Jonathan Morgan.
Q. The former owner of the property?
A. Yes, sir.
Q. And they inherited the property?
A. Yes, sir; it passed to them.
Q. Did one of these ladies marry John H. Green?
A. Yes, sir.
Q. Do you know of that plantation having been sold in 1868?
A. Yes, sir; it was sold in 1868 or '9. I don't remember what time.
Q. Look at this copy of the deed, styled George A. Sheridan, sheriff, to John H. Green; when was that sold?
A. The sale was made on the fifth of September, 1868.
Q. How many acres of land and what was the price?
A. It was a large plantation, with a great deal of woodland on it; but how many acres—the exact number of acres—I don't know. I would have to refer to the deed, which shows——
Q. What was the price of that sale?
A. I recollect at the time it was a very small price, particularly as it had formerly been a very fine plantation. My remem-
417 brance of it is, it was one dollar and a half ($1.50) an acre. If the deed calls for more, of course my memory is wrong.

Counsel for defendant offers in evidence deed referred to, marked Exhibit "G."
Counsel for complainant objects to introduction of the document on the ground of its irrelevancy.

Q. Judge Montgomery, do you know the Sherwood plantation?
A. Yes, sir; I know it very well.
Q. Was that plantation liable to overflow?
A. I don't think it has been overflowed since I have lived in the parish; I should judge it was pretty free from overflow.
Q. Who did that place belong to after the war?
A. I believe it belonged to Mrs. Williams.
Q. Did the minor, Selina Kent, ever have any interest in it?
A. Yes, sir; she had an interest in the proporty—set up an interest in the property.
Q. Do you remember any purchase of the interest of that minor by John B. Williams before the war?
A. Yes, sir.
Q. Was the minor's interest of one hundred and twenty-eight (128) acres sold to Mr. Williams before the war?
A. Yes, sir; but I don't remember what the price was.
Q. Was it as much as ten or twelve thousand ($10,000 or $12,000) dollars?
A. Yes, sir; I believe it was; I remember the property was
418 held as high as one hundred ($100) dollars an acre in those times.
Q. Was this interest of the minor in the Sherwood property considered as valuable after the war as any other property on the river?

A. Well, I think it was considered as valuable as any property in that neighborhood.

Q. What does it seem that the property sold for at auction sale?

A. It purports to have sold for two hundred and twenty dollars ($220)—one hundred and twenty acres—February first, 1868.

Counsel for defendant offers in evidence document referred to, marked Exhibit "H," to which counsel for complainant objects on the ground of irrelevancy.

Q. Judge Montgomery, did you know the plantation belonging to James A. and Selser Bass before the war?

A. Yes, sir; I am acquainted with the place.

Q. These were the children of old James Bass?

A. Yes, sir; they were.

Q. And heirs?

A. Yes, sir; and heirs.

Q. I will ask you whether or not there were not valuable improvements and residence and other things on that place?

A. There was a fine residence on the place—a fine, costly dwelling-house.

Q. What did that dwelling-house probably cost before the war?

A. I talked with Bass a good deal about it; my recollection
419 is that the residence cost about fifteen or twenty — dollars ($15,000 or $20,000); I know I tried to get him to build a different style of house altogether; afterwards he adopted that plan.

Q. I will ask you if this plantation was not situated similar to the Raleigh place in 1868—that is, being injured by the levees being down?

A. Well, it was injured. Yes, sir; more by reason of a caving bank than the levees being down.

Q. Was that so on both plantations?

A. Yes, sir; they were similarly situated.

Q. Liable to overflow in 1868?

A. Yes, sir.

Q. Was this plantation known as the Bass place a very valuable plantation before the war?

A. It was considered a very fine place before the war.

Q. I will ask you whether it was particularly valuable on account of the elegant residence situated on it?

A. That made it more desireable property.

Q. Do you know of that place having been sold in 1868 at private sale?

A. Yes, sir; I recollect the time it was purchased. I heard there was such a purchase; I don't know of my own personal knowledge.

Q. Who became the purchaser of that property?

A. I heard that W. G. Wyly became the purchaser of it in 1868.

Q. At public or private sale?

A. That was a private sale.

420 Q. Look at the deed; what was the date of that sale?

A. I see it was the seventeenth of October, 1868.

Q. What was the price of that sale in October, 1868?

A. I heard that the price was a very small one, but it is impossible for me to recollect everything that occurred twelve or fourteen years ago.

Q. Look at the deed.

A. The deed says two thousand dollars ($2,000), don't it? My recollection was that it was a dollar or two an acre; I cannot say which, but the deed will show what the real price was.

Counsel for defendant offers in evidence document referred to, marked Exhibit "I."

Counsel for complainant objects to the introduction of the document on the ground of irrelevancy.

Q. Judge Montgomery, I hold in my hand what purports to be a deed from George A. Sheridan, sheriff, to Henry Frellsen, which was made on the fifth of December, 1869; nineteen hundred and ninety-two (1,992) acres of land, sold for six hundred and sixty-four dollars and twenty-seven cents ($664.27). I would ask you to please examine that copy of the deed and say whether that was valuable property, what it sold for, and what was the price? Were those lands valuable lands and considered of great value before the war?

421 A. Yes, sir; the lands were considered valuable before the war. It sold for that price, as mentioned in the deed. I was Mr. Frellsen's attorney in the matter.

Q. Have you not any recollection of attending that sale of your client's?

A. I don't know; I may have done so, as I stated before; after such a long length of time it is impossible for me to remember everything that was done. I was the attorney, and I don't remember positively whether I was present at the sale or not. All I can say is I was the attorney of Mr. Frellsen and conducted the proceedings.

Q. Did you not purchase it for your client at the price set out?

A. I know it was knocked down to Mr. Frellsen at that price. Now, whether I was present or not I don't remember. I presume I was, though the time is too long back for me to remember whether I attended the sale or not.

Counsel for defendant offers in evidence document marked Exhibit "J."

Counsel for complainant objects on the ground of irrelevancy.

Q. Judge Montgomery, here are two deeds purporting to have been made by George A. Sheridan, sheriff, to F. M. Goodrich. One purports to have been made on the fifth of September, 1868, and the other one purports to have been made on the nineteenth of December, 1869, being two shares of a plantation occupied by George

422 Foster at the present time, known as the Pecan Grove plantation. I will ask you to examine these deeds and say if they don't refer to the lands owned by George Foster at the present time.

A. Yes, sir; they refer to the Jonathan Morgan property, which is now owned by George Foster.

Q. Were they valuable properties before the war?

A. Yes, sir.

Q. Were they as valuable as the Raleigh plantation or any other land?

A. Yes, sir; as valuable as any land in the neighborhood.

Counsel for defendant offers in evidence documents marked Exhibit- "K" and "L," to which counsel for complainant objects on the ground of irrelevancy.

Q. You have stated, Judge Montgomery, you were a succession creditor of the succession of James Raley?

A. Yes, sir; I was.

Q. The amount of that debt was about how much?

A. It was six thousand ($6,000) dollars; perhaps a little over; I have not looked at the judgment lately.

Q. Please examine the document I hand you and see whether that is the account which was homologated and which is part of the mortuary papers in the succession of James Raley.

A. Yes, sir; that is a fact.

423 Q. Does this account evidence your judgment against the succession of James Raley as a succession creditor?

A. Well, yes, sir; it does; it is a statement of my judgment against the estate of Raley. It contains a statement of my judgment against the estate of Raley.

Q. When that judgment was rendered who represented the complainants, the parties on the other side, when you got your judgment?

A. Mr. Goodrich was the attorney.

Q. Who was the *curator ad hoc?*

A. Mr. Goodrich was the lawyer of the estate of Raley. I think De France was *curator ad hoc* (after looking at documents referred to witness states that); C. A. De France was *curator ad hoc.* I refer you to the proceedings.

Q. He was appointed *curator ad hoc.*

A. Yes, sir.

Q. To represent whom?

A. To represent the estate of Raley.

Q. Did I understand you to say that you had contradictorily a judgment against the estate, against the heirs of Raley, for six thousand dollars ($6,000)?

A. Yes, sir.

Q. When was that judgment rendered?

A. I have forgotten; it was rendered when this account was filed.

Q. When was that account homologated?

A. The homologation shows it was done the sixth of April, 1867. I did not remember exactly whether it was in '66 or '7.

424 Counsel for defendant offers in evidence document marked Exhibit "M," to which counsel for complainant objects on ground of irrelevancy.

Q. I will ask you whether Frederick W. Boyd, dative executor, ever paid that debt to you?

A. No, sir; he never paid the debt.

Q. Was that a subsisting judgment, when the Raleigh plantation was sold?

A. Yes, sir; I waited for Mr. Boyd for some considerable time for my judgment—to pay that judgment; but as he had gone off out of the State, I determined to enforce my claim.

Q. What do you think of Frederick W. Boyd as dative executor; what is your opinion?

A. That is a hard question. I don't want to attack Mr. Boyd's character or reputation, or to give my opinion of his character.

Q. Besides your having a preferred claim of six thousand dollars ($6,000), did you or not represent a great many creditors of the succession of James Raley?

A. I had a large number of claims in my possession against the estate of James Raley.

Q. Have you any idea of the aggregate amount of the debts you held for collection against the succession?

A. It might have been sixty or seventy or eighty thousand dollars ($60,000 or $70,000 or $80,000).

Q. Did you ever try to collect these claims from Frederick W. Boyd, dative executor, or did you ever use legal means to
425 compel him to settle these claims that you had in your hands for collection as well as your own?

A. I could not see him and I got an order of court for Mr. Boyd to sell the property, and he went — of the State without trying to enforce the order of court. There was nothing further done, or could be done, until Mr. Egelly or some — else was appointed administrator.

Q. I will ask you whether Frederick W. Boyd ever paid any of these debts?

A. No, sir; he never paid any of them, to my knowledge; he never did.

Q. Did he avoid payment of the debts in every manner possible?

A. I can only say he went off out of the State; abandoned the estate and the administration; that is the only evasion that I remember or think of.

Q. Did he ever file an account?

A. No, sir; he never filed any account; if he did the records will show it.

Q. Did the creditors ever take a rule upon him to make him file his account?

A. I expect some of the creditors did; I am not sure that they did; I think some of the creditors took a rule on him, but I don't remember who they are. If anything of that sort was done the records will show who they were.

Q. Do you remember whether Frederick W. Boyd, dative executor, ever made any settlement or pursue- any legitimate course in winding up the succession of James Raley?

426 A. I can only say he never filed any account; he never paid any debts of the estate; didn't do anything in regard to

the estate, but I don't care to testify to what he did legitimately or illegitimately; that is an opinion.

Q. I will ask you what became of the large number of mules and wagons attached to the Raleigh plantation?

A. I don't know what became of them; I only know that Dr. Carson brought them back from Texas—that is, Dr. Carson's widow, or rather the overseers did it; they brought them back to the plantation after the war.

Q. Did Frederick W. Boyd, dative executor, ever cause a sale of the perishable property of this succession?

A. He never did; he never caused any sale to be made of that kind.

Q. Did Frederick W. Boyd, dative executor, use the mules, wagons, and other personal property of the succession of James Raley in his cotton-planting experiment on the Raleigh plantation in 1866?

A. He had the mules; he had all the personal property that was brought back from Texas; used it there in planting.

Q. Did he and Pittman cultivate the Raleigh plantation in 1866, or attempt to do it?

A. Yes, sir.

Q. What was the result of their experiment?

A. I don't think it was very successful.

Q. Was it disastrous?

427 A. I think it was; I think they made a terrible failure, as everybody else did.

Q. Did Pittman and Boyd lose money in the enterprise?

A. I don't know how much money they lost; I know I did in 1866, and everybody else did, without exception.

Q. When he broke up and ran away—Frederick W. Boyd, dative executor—did he dispose of this property to his own benefit, or did he account to his successor, Charles R. Egelly, for the mules and wagons and other personal property belonging to the succession of James Raley?

A. I don't know whether he disposed of it to his own benefit or not; I know he did not turn it over to Mr. Egelly.

Q. Did it come into the possession of Charles R. Egelly?

A. No, sir; it did not.

Q. Was it upon the inventory of Egelly?

A. No, sir; it was not.

Q. Was this personal property missing after Boyd had absconded from the State?

A. It was; at the time the inventory was taken there was no personal property on the plantation at all.

Q. You mean the inventory that was taken prior to the appointment of Egelly as administrator?

A. Yes, sir; the third inventory I refer to.

Q. Was it understood there was other personal property besides the mules that Frederick W. Boyd was trying to dispose of—that is, property belonging to the succession of James Raley?

428 A. I don't know anything about that of my own knowledge; I heard he was setting up a cotton claim at Washington at that time, or about that time.

Q. What was the extent of that claim—was it a large one?

A. Well, I don't know as to the extent of the claim; I understood it was a large one; that is all I can say.

Q. What was that claim for?

A. All for cotton.

Q. Taken from the Raleigh plantation by whom?

A. Taken by the Federal force from the Raleigh plantation, I believe.

Q. Did Frederick W. Boyd, dative executor, ever account for a large amount of money he drew from the United States Government as dative executor of James Raley's succession?

A. I don't know of my own knowledge that he ever got the money; he rendered no account of it to the probate court here.

Q. Did he turn over to his successor, Charles R. Egelly, any of the proceeds he obtained from the United States Government in the court of claims?

A. He never turned over that or any other money to Mr. Chas. R. Egelly; all I can say is that I did not get any money from him.

Q. Did he ever pay any of these claims which you had against the estate?

A. He never did pay any of these claims.

Q. Judge Montgomery, I have a record of a suit styled
429 creditors against succession of James Raley, No. 5104, of the docket of the district court of this parish. This purports to be a proceeding on the part of a great number of creditors, by you, as their attorney, to compel a settlement of the succession of James Raley and to compel this delinquent executor to file his account and sell the property and pay debts. This proceeding and order of court was had on or about the twenty-ninth of August, 1866. I would ask you to look at those papers, and ask you whether you were the attorney that instituted those proceedings in behalf of the creditors named in the petition?

A. I was the attorney there representing those creditors?

Q. I will ask you whether all of these creditors whose names are set down in that petition were not *bona fide* creditors of the succession of James Raley, and whether they have ever been paid, to your knowledge?

A. They were *bona fide* creditors, and I am satisfied that none of them has ever been paid except G. Malin Davis.

Q. Will you explain how he obtained that payment?

A. Well, he instructed me to have the property sold and bid the amount of his debt for the "Carondelet" plantation. I presume he himself had some sort of arrangement with some of them that he should bid his debt and take that property; that was in 1866.

Q. Was the Carondelet plantation sold under those pro-
430 ceedings in this suit?

A. Yes, sir.

Q. What did that plantation sell for?

A. It sold under Mr. Davis' judgment. I see it is put down in the deed at forty-five thousand two hundred and forty dollars ($45,240).

Q. I will ask you whether that money was paid up in cash, or how was it paid?

A. Well, Mr. Davis bought the property as a creditor for the amount of his bid.

Q. Was that really an auction sale of the property or was it an arrangement by which he merely retook the property?

A. My belief at the time was—he instructed me to buy it—my impression at the time was that there was some sort of an agreement by which he was to take the property for the debt.

Q. And the property was bid in for the amount of his debt?

A. Yes, sir.

Q. Did you regard that as the cash value of the property at the time or simply as a bid made in settlement of a transaction between a debtor and some one of the heirs of the Raleigh plantation, or something of that kind, or how?

A. I can only say I don't think if Mr. Davis wanted to buy the plantation that he would have given anything like that price for it; he simply took it for the amount of debt.

Q. I will ask you whether you understood that he was to get the property in execution of a debt?

431 A. Yes, sir.

Q. Was that the cause of this large bid?

A. Yes, sir; that was the reason, because he would not have instructed me to buy the property at that price when he could have got it a heap cheaper.

Q. He simply bought it in for the amount of the debt?

A. Yes, sir.

Q. I will ask you whether those other creditors whose claims are set out there have ever been paid by Frederick W. Boyd, dative executor?

A. I cannot say, but I don't think they have. I know all those that were held by me; none of them were ever paid to me as attorney.

Q. It seems in this suit there was an order of sale of the Raleigh plantation as well as the Carondelet?

A. Yes, sir.

Q. Do you recollect whether that was postponed at the instance of Mr. Boyd, in 1866, or why was the sale of the Raleigh plantation postponed when it had been ordered to be sold under this proceeding in suit No. 5104?

A. My impression is that it was withheld for sale—the sale was not enforced—or was withheld for the purpose of allowing old Dr. Boyd to make a crop. Subsequent to that, and for another reason, it was withheld because Dr. Boyd had gone off out of the State and there was no person to represent the estate. There was no person to proceed contradictorily with.

Q. Why?

432 A. Because in four or five months of the year 1867 the place was entirely under water. I was close by on Mrs. Savage's place and saw the water.

Q. Then you think the delay of the sale of the Raleigh planta-

tion under the proceedings in judgment No. 5104 was a delay, then, of accommodation to Frederick W. Boyd, dative executor, and for the reason that for several months in 1867 the plantation was under water, and for the reason that Frederick W. Boyd had abandoned the place, and there was no one contradictorily on whom to execute that judgment?

A. I cannot say it was for the express purpose of accommodating Dr. Boyd, but it was for the reasons just given, in order to enable the Dr. to make a crop, which, of course, would furnish some means which would reduce the creditors' claims.

Q. You mean to make a crop in '67?

A. Yes, sir; after the sale of Carondelet place, to enable him to make a crop, but the overflow came on early in March and the levee caved off. The water remained on the ground till the middle of August. I state this because for that reason Dr. Boyd could not make the crop in 1867. Then he left the State. We waited for him, thinking he would come back. Finally, in 1868, I determined to procure the appointment of some one else, seeing he had gone permanently.

Q. Had any one the control of the Raleigh plantation after Dr. Boyd left, in 1867, until Mr. Egelly became appointed, in 1868?

A. No, sir; because the plantation was in possession of the floods.

433 Q. The place, to all intents and purposes, then, was abandoned?

A. Yes, sir.

Q. Did you wait a reasonable time for Dr. Boyd to return and resume the duties of dative executor before you sought to destitute him and appoint an administrator?

A. Yes, sir; I waited till June or July, 1868, before I filed proceedings against him.

Q. How long had Boyd been gone before you sought to destitute him and appoint another administrator?

A. Well, it was over a year.

Q. Had he left an authorized agent or power of attorney with any one in the State to represent him?

A. No, sir; not that I know of; there is none of record.

Q. Then the property and succession had been left by him, abandoned, over twelve months when you sought to replace him by having another administrator appointed?

A. Yes, sir.

Q. Did you do this in behalf of the other creditors and in your own behalf because the property was lying out—no one to take care of it?

A. I did it to secure my own debt as well as the debt of the other creditors, and for the purpose of collecting my debt.

Q. Judge Montgomery, it is charged in the bill that Frederick W. Boyd was only temporarily absent from the estate; that one

434 C. R. Egelly, Sparrow and Montgomery, and W. G. Wyly confederated and combined together with a view to defraud and swindle the wife of Dr. Frederick W. Boyd by transferring an

apparent title of the Raleigh plantation from the succession of James Raley to the defendant, W. G. Wyly. Is that true or false?

A. It is not true. There was no confederation at all; not a particle of truth in it. The proceedings are set out by me in the usual mode of such proceedings. As for Dr. Boyd being temporarily absent, I think he was permanently absent, because he has never been back to the State since, except to visit it on one occasion.

Q. How long since he came back temporarily?

A. Eighteen months or two years ago.

Q. I will ask you if Frederick W. Boyd had returned within a reasonable time after he had left the administration of the estate, would you or not have proceeded to wind up the estate under your judgment styled creditors *versus* James Raley, No. 5104, above referred to?

A. I assuredly would have done so.

Q. Judge Montgomery, the judgment in said suit purports to have been rendered by the Hon. E. D. Farrar, judge of our district court, on the 20th of December, 1866, and the sale of the Carondelet plantation thereunder purports to have been made on the 2nd of February, 1867. You have mentioned reasons which caused a delay of several years in selling the Raleigh plantation under this judg-
435 ment, and you have stated that in 1868 the creditors as well as yourself were anxious to sell that plantation and wind up the estate. Do I understand you to say that you were unable to do that under this judgment because of the abandonment by the executor, Frederick W. Boyd, in leaving the estate in 1867?

A. Yes, sir; that is part of the reason, though there are other reasons which I have before mentioned.

Q. Please state them fully; what were the reasons that induced you on behalf of the creditors to take proceedings to destitute Frederick W. Boyd dative executor in July, 1868, and to provoke the appointment of some more faithful administrator of the estate?

A. Well, as I have already stated that several times, I think it was for the purpose of having the property sold to pay the debts as far as the proceeds would go.

Q. Could you have sold the property under this judgment above referred to without having first provoked the appointment of an administrator or some one to represent the succession?

A. No, sir; I could not, of course; I think I have already stated that.

Q. Was there any fraudulent combination that was the central idea of destituting Frederick W. Boyd and appointing another executor? Was it a disposition by legal forms merely to transfer an apparent title of the Raleigh plantation to W. G. Wyly, or
436 was the effort to destitute Boyd from the administration of that estate in the usual mode pursued by attorneys in behalf of their clients to compel a settlement of a succession that had been opened and had been subjected to a great deal of mismanagement and neglect?

A. There was no combination, fraudulent or otherwise, in regard to the matter, either with W. G. Wyly or any one else. I provoked

the appointment of Mr. Egelly for the purpose of collecting debts which I had, and to collect my own, too, as far as the property would do it. I had no consultation with anybody at all about taking these proceedings or about the sale of the property. I considered it my duty, as attorney, to collect debts, and in doing so I took the necessary legal means to do it.

Q. What I mean to say is, Was there anything unusual in substituting Egelly as administrator instead of dative executor Boyd, who had abandoned his trust, or was it done in the usual course of business and for the legitimate purpose of winding up the estate and settling the debts as far as you could?

A. I am willing to answer that question again. There was nothing unusual in it. I did what was customary for attorneys to do who had in view collection of claims as the means by which I could enforce their payment.

Q. How was it that you came to destitute Frederick W. Boyd as dative executor and proceeded to open the succession by the
437 appointment of a new administrator and to have the property sold and a settlement of the estate made?

A. I waited and waited for Dr. Boyd to return back to the State. I was anxious to collect my own debt as well as the creditors that I represented, and as there was no one here attending to it and representing the estate I proceeded to destitute him and have somebody else appointed who would wind up the estate.

Q. Did you observe the property was being neglected also as one reason why you desired some one to take charge of it on account of the absence of Boyd?

A. Yes, sir; I have already stated that the property was abandoned and neglected, and was getting in a worse condition every day. The levees on the front part of it were down, the banks were caving, and the levees were down, with no prospect of going up, and the taxes were accumulating all the time against the property. I concluded that if I waited any longer it would be that much worse. It was getting worse every day.

Q. Is the month of October an eligible time for the sale of cotton plantations in the parish of Carroll?

A. Well, generally it is perhaps about the best season of the year; October and November would be the best seasons of the year to sell property.

Q. In this judgment here, styled creditors against the succession of James Raley, No. 5104, a great many creditors are set down for a large amount of debt, as exhibited against the succession
438 of James Raley. Will you please say whether the succession of James Raley was solvent or insolvent in 1867, when Frederick W. Boyd left the State? Please explain the condition of the succession in this regard.

A. Well, the succession I regarded as very badly insolvent at that time

Q. Have you any idea of the amount of judgments you held against the estate of Raley in behalf of yourself and your various clients?

A. The records will show; I can only approximate it, but I think it was from seventy to eighty thousand dollars ($70,000 to $80,000); I cannot tell without going to my docket to look.

Q. Then I understand you to say the succession was hopelessly insolvent?

A. Yes, sir.

Was it likewise so in 1868, when the sale took place?

A. Yes, sir; forever and a day.

NOTE.—Document marked Exhibit "N" filed on part of def't.

Q. Look at that, Judge Montgomery, and see what it is (referring to document marked Exhibit "O").

A. It purports to be an account of the administration of the succession of James Raley by Sterling T. Austin.

Counsel for defendant offers in evidence document referred to, marked Exhibit "O;" *to which* counsel for complainant objects to the introduction of the document just offered on the ground of irrelevancy.

439 Q. Was the complainant, Mrs. Mary E. R. Boyd, ever recognized by the probate court for the parish of East Carroll as heir or legatee, or was there an order of court made to put her in possession of the Raleigh plantation or of any property of the succession of James Raley pursuant to articles Nos. 1012 and 1617 of the revised code of Louisiana?

A. No.

Q. Was the court refer-ed — the court seized of jurisdiction of the succession of James Raley and of the Raleigh plantation?

A. Yes, sir; undoubtedly.

Q. Judge Montgomery, I will ask you to explain in a few words the financial and political condition of the country in 1868, when the sale in question was made.

A. The financial and political condition of the country was very bad, and the prospect for the future we regarded as very gloomy. There was no money in the country, and ain't yet; property was depreciated very much; there seemed to be no desire to own or buy property at any price. There were very few private sales taking place, and the auction price of property was little or nothing; people would not buy it for the reason that property was depreciated so. There was no money in the country; property was bringing more at private sale, but there were very few of those; auction prices were very much less. The levees were down and no prospect
440 of their going up. Owing to the condition of things in the parish the people had no confidence in the colored labor; people were particularly despondent; their efforts to make crops in 1866 and '7 did not even return the expenses of making them; the people were pretty much discouraged about making any crop; many of the largest landholders here regarded property as almost worthless. This proceeded from the causes mentioned and from the uncertain future as to the politics of the country. Every one regarded that Grant would be elected beyond any doubt, and that he would

inaugurate a perfect Africanization of the country in conju-ction with the carpet-baggers in New Orleans. Those were the things, of course, that influenced the minds of everybody; that was the general belief among the people at that time.

Q. Do you refer to the time of the sale, Oct. 20th, 1868?

A. I refer to the whole of the year 1868.

Q. Did the October elections of Indiana and Ohio seem to foreshadow the certainty of the election of Gen. Grant in 1868?

A. I don't remember what those elections foreshadowed at this length of time, but the people believed the election of Grant certain; nobody thought Seymour and Blair would be elected.

Q. What effect upon the price of real property did the in-
441 auguration of the Warmoth government have in 1868?

A. Well, it had a very disastrous effect; the very first thing he did was to go to work and spend our money lavishly.

Q. Did the want of confidence in the existing Government and the financial distress of the country in Oct., 1868, brake down the price of property at forced sales to almost nominal prices?

A. Together with the other causes I have mentioned, it did.

Q. In your experience has there been periods of great fluctuations in the value of plantations on the Mississippi river? If so, illustrate the idea.

A. Well, there always has been fluctuation in the value of property, and it continues to be so now; this is caused by the condition of the levees and the making of good or bad crops and the scarcity of an abundance of money.

Q. As an illustration, take the Salem plantation, adjoining the Raleigh plantation; what fluctuations do you remember to have occurred in the history of that plantation in the last ten (10) years?

A. It has encountered a great many fluctuations; it rented in 1866 for twenty-five dollars ($25.00) an acre; it was afterwards resold, I think in 1867 or 1868, for about six thousand dollars ($6,000)—
a good deal less than it leased for; afterwards the levee broke;
442 in its present condition I don't think it is worth hardly a cent;
I would not have it as a gift; I would not pay the expenses of putting it in condition.

Q. I understand you to say that there has been a great overflow in that neighborhood this year?

A. Yes, sir.

Q. What effect did that produce upon the auction price of the Salem (plantation) property?

A. It reduced it down to a mere nominal value; it would hardly sell for anything at auction.

Q. What do you think that plantation would command if put upon the market to-day at an auction sale?

A. Which plantation?

Q. The Salem plantation.

A. Unless it was bid in by some one interested in the property, I don't believe it would bring a dollar and a quarter ($1.25) an acre in its present condition.

Q. Well, take the "Illawara" plantation immediately above; what is the value of that place?

A. The same remarks are applicable to that place.

Q. Well, take the "Airley" plantation; what do you think the Airley plantation would command upon the market at a forced sale?

A. Nothing more than a mere nominal price.

Q. Why do you say that?

A. Because it was overflowed, and there are thousands of logs upon it; fences torn down; the bank is caved right up to the
443 dwelling-house; everything has to be moved back; most everything has to be rebuilt.

Q. Could any of the plantations in that neighborhood when the water was rushing broadcast over them in the month of April last if put upon the market have commanded as much as five dollars ($5.00) an acre?

A. I don't think they would. I am satisfied the places if to-day put upon the market would not bring five dollars ($5.00) an acre.

Q. What effect does an overflow have upon plantations on the bank of the Mississippi river?

A. It has a very damaging effect. It fills up the ditches, covers the ground with logs, and in many cases washes away the houses. I have seen houses with four (4) or five (5) feet of sediment in them. An overflow deposits sand and coca grass all over a plantation.

Q. What would you consider the change produced on a plantation improved like the Raleigh plantation—as to its value I mean?

A. The change as to its value would be just as I have mentioned with reference to these other places.

Q. Then, I understand you to say that a plantation that is overflowed, washed, etc., is so much damaged as to be almost strip-ed of its cheif value, and is in a condition to compel its owner to
444 make large investments to re-establish its value and to put it in a state to be cultivated?

A. That is in a great measure true.

Q. Take the "Out Post" plantation.

A. I took it once.

Q. As an illustration of the fluctuations of the values of lands on the Mississippi river according to the circumstances prevailing at any definite time, I will ask you, Judge Montgomery, about the sale of the Cunningham plantation yesterday by you as attorney of the succession, what was the condition of that property, and what did it sell for per acre yesterday at that sale?

A. Well, it sold for twelve dollars and a half ($12.50) an acre.

Q. Was it a fair open sale?

A. Yes; of course it was as fair as any in the world.

Q. Where was the land situated?

A. On the Mississippi river.

Q. How far from Lake Providence?

A. About six (6) or seven (7) miles.

Q. Below here?

A. Yes, sir.

Q. Was that plantation overflowed this year?
A. No; it was not overflowed this year.
Q. Is there a crop growing on the place this year?
A. Yes, sir.
Q. With regard to the relative quality of open improved land in the tract, is that as favorably situated as these other places?
A. Yes, sir; I believe it is.
445 Q. What improvements on that place, as well as you can remember?
A. Well, there is a tolerably good house, gin, and quarters.
Q. Steam gin?
A. Yes, sir.
Q. Did the place seem to be in pretty good fix?
A. Yes, sir; tolerably good.
Q. What proportion of the land was open and what proportion laying out?
A. Pretty near all open.
Q. Isn't it now pretty nearly all cultivated?
A. Yes, sir; pretty nearly all cultivated. I believe there is about thirty (30) acres that are not in cultivation. I am just guessing at that.
Q. I will ask you whether that is as good a plantation as the "Raleigh" or any other plantation?
A. Well, it is a good average plantation; as good as any plantation in the parish.
Q. Is it as good a plantation in proportion as the Raleigh plantation?
A. Yes, sir.
Q. How is it in regard to overflow; is it more favorably situated; is there a good levee on the place?
A. Oh, yes; it is a fine levee there.
Q. How is the Raleigh plantation situated in that regard?
A. Well, the Raleigh levee is down very bad.
Q. Is it caving?
A. Yes, sir; it caves off.
446 Q. Judge Montgomery, this plantation has escaped the overflow of 1882 and is favorably situated with regard to the levees and all under cultivation and has but yesterday sold as low as twelve dollars and a half ($12.50) an acre at public auction. How do you account for this diminution or falling off of the value of such property in this parish?
A. Well, it has been the uncertainty of the levees and the unprofitableness of cotton planting since the war, but at this time the particular reason is the want of cash. There is not a man in this parish that is hardly able to buy any property at all. I don't believe if you were to put up a place here now that would call for a cash payment of fifteen thousand dollars ($15,000) there is a man in this parish that could raise half that sum. You have no idea of the unprofitableness of cotton planting in this parish; nobody makes anything planting.
Q. You mean at the present time?

A. At the present time and since the war.

Q. Did you say this Cunningham place which was sold yesterday at a succession sale was a just, fair, and open sale in open market?

A. Of course it was; it was sold to pay the creditors, and some of the creditors were present and bid on the property. It certainly was a just, fair, and open sale.

447 Q. Do you remember the sale of the "California" plantation in the parish of Madison? If so, state when it occurred, the circumstances of the sale, and who were the lawyers connected with it on one side and the other, if you can remember.

A. Yey, sir; I provoked the sale.

Q. Were you the attorney?

A. Yes, sir; I was one of them.

Q. Who was the other?

A. I provoked the sale and there was another gentleman from New Orleans that came there and attended the sale with me—Judge White.

Q. Judge E. D. White?

A. Yes, sir; he came there and represented some of the creditors. I represented Dudley and Nelson and Louisiana Bank. I think Judge White represented Rochereau; it was either that or the Graves place. It seems to me that Rochereau had a good large claim against the Williams place; that was knocked off to them and the California place to Dudley and Nelson, of the Louisiana Bank.

Q. What price did the California place bring at the auction sale?

A. My impression is a dollar and a quarter ($1.25) an acre or two-thirds of that sum; that is my remembrance.

Q. What year did this sale occur that you refer to?

A. As I remember, it was in the year 1868—in June, 1868—I think along there some time. I can't remember precisely. I don't know exactly.

448 Q. Where is that plantation located?

A. The California plantation is in Madison.

Q. Near what place?

A. Right back of Omega on the river, about two miles, I think.

Q. Was that considered a fine plantation before the war?

A. Yes, sir; it was. I believe it sold for a very big price. In regard to the presence of Judge White I am under the impression he was there to attend to the interest of Rochereau & Co. against the place belonging to John B. Williams. We bought that in for a dollar and a quarter ($1.25) an acre.

Q. Are you positive that Judge White had *any* anything to do with this matter?

A. I will say this, on reflection: I rather think he came there to assist me in the purchase of John B. Williams' place or the "Graves place," and he, conjointly with me, bought in the property, I think, at one dollar and a quarter ($1.25) an acre.

Q. That was the "Graves" place?

A. Yes, sir; the Graves place.

Q. Immediately after the purchase of the Raleigh plantation did

W. G. Wyly proceed to make valuable improvements on the place?

A. I have previously answered yes to that question.

NOTE.—Document marked "P" filed in evidence on the part of def't.

Q. Were there good crops made in the country in 1869 and 1870?

449 A. Yes, sir; fair, tolerably fair crops made in 1869, but a better one in 1870.

Q. In 1869, 1870, and 1871, along there, didn't the favorable condition of things in the parish increase the value of the property very much?

A. Yes, sir; property about that time sprang up a good deal.

Q. Do you mean improved land?

A. Yes, sir; I mean improved plantations; wild lands were not worth any more then than they are now.

Q. Do you mean that by the favorable crops of 1869 and 1870 and for a few years afterwards that there was a revival of the prices of property of lands in this parish?

A. Yes, sir; there was; but they have been going down since.

Q. Why was it, having procured an order of sale in 1868, you failed to bid on the Raleigh plantation; buy it in for your clients—the creditors, your clients?

A. Well, I had a debt of my own to collect, and I knew if the property was sold my claim for upwards of six thousand dollars ($6,000.00) would be the first. It would not have been proper to put myself in competition with my clients and bid on the property and sacrifice the other debts; besides I did not want to buy the property personally at all for any price; furthermore, I was not especially authorized for any of my clients to bid it in for them or required to do so.

450 Q. Did I understand you to say that you could not consistently bid for the property, particularly as you were one of the creditors; that you could not consistently bid for any particular one — the creditors, as their interests conflicted, and especially as you had no authority or had not been requested to do so, and furthermore, as you were a preferred creditor for a large sum yourself, and consequently declined to bid for the property at that sale for those and other reasons?

A. I say I have answered this question in my last answer, and I now repeat it. I determined just to let the property be sold in the usual course of business, and if anybody would buy in the property I would have the proceeds divided according to law. That was my reason for not buying up the property.

Q. Did you have any other reason than a desire fairly to see the property sold and the succession of James Raley wound up?

A. How could I have any other motive; I have already stated what my motive was—to sell the property in the usual way for whatever it might bring, and that would be divided among the creditors according to their rank.

Q. It is alleged in the bill, Judge Montgomery, that on the 16th

of July, 1866, the Raleigh plantation was inventoried at fifty-five dollars ($55) an acre. I will ask you whether in 1868 that inventory was a proper estimate and valuation of that property, and
451 whether or not a new inventory was not necessary in order to fix a valuation upon the Raleigh plantation at that time, and also to determine the amount of the bond of the new administrator?

A. I think that is the fact.

Q. Do you believe an administrator could have given bond in the parish of Carroll who would have been able to have given a bond predicated upon the inventory of July, 1866?

A. I don't think they could; I have no idea they could have given bond.

Q. The bond of Frederick W. Boyd, dative executor, was upwards of thirty thousand dollars ($30,000), as well as I remember, Judge Montgomery, and Mr. Deeson was the surety upon that bond; was that a good surety; was he solvent; able to respond, if called upon to do so, for the amount of his bond?

A. I have already answered that I considered Mr. Deeson as insolvent at the time.

Q. I will ask you, Judge Montgomery, whether he was a good and sufficient bondsman at the time he signed the bond for Fred. W. Boyd, dative executor, in 1867?

A. He was not; he was an insolvent man after the war.

Q. Do I understand you to say, Judge Montgomery, that Fred. W. Boyd was dative executor in 1866 of the property of James Raley's succession without any adequate surety upon his bond?

452 A. I can only repeat my answer to the last question, that the surety was insolvent.

Q. I will ask you, Judge Montgomery, whether, then, in 1866, 1867, and 1868, when proceedings were taken against Fred. W. Boyd, dative executor, to destitute him, was there any responsibility or security existing in favor of *of* the creditors as against the bondsman, William Deeson; in other words, could the creditors of the Raley succession have been protected against loss by the bond of F. W. Boyd, dative executor, 1866, 1867, and 1868, the year he was destituted?

A. I think the bond was worthless; therefore there could have been no protection. There were a great many claims against Deeson's property.

Q. Suppose, Judge Montgomery, in 1868, you had not destituted Fred. W. Boyd, dative executor, when and how could you ever have settled up the estate of James Raley, in view of the fact that the trust had been abandoned by this dative executor, who had an insolvent bondsman and who was himself insolvent?

A. Well, of course there was no way to settle up the estate without provoking the appointment of another administrator.

Q. Was that your motive of destituting Boyd and securing the appointment of Egelly, to be able to wind up the estate and settle with the creditors?

A. Well, of course it was.

453 Q. It is alleged in the bill that the motive was to transfer

an apparent title of the Raleigh plantation to W. G. Wyly; that there was a conspiracy between Wyly, Egelly, and Sparrow and Montgomery to accomplish the fraud. I will ask you whether that is true or false?

A. It is not true at all; I had nothing to do with Wyly about the property.

Q. Did W. G. Wyly have any hand or was he in the parish present or cognizant of this effort to destitute Boyd and appoint Charles R. Egelly?

A. I don't remember if he was; I rather think he was not. In fact, I know he was not. I know he had nothing to do with the destitution.

Q. Did he have any hand in or any knowledge of the appraisement that has been characterized as a vile and base apprais-ment by counsel for complainant?

A. None that I know of.

Q. Who selected the appraisers, and when?

A. I suppose the recorder did.

Q. Was that prior to the appointment of Chas. R. Egelly or subsequent?

A. It was prior to the appointment of Egelly as administrator, or prior to his qualification, I mean.

Q. Was there any confederation between Wyly, Sparrow & Montgomery, and Egelly about the selection of the appraiser?

454 A. There was no confederation of any kind; it was done in the usual course of business. The commission was given to the recorder; he took the inventory in the usual mode.

Q. It is alleged in the bill that the confederates, Egelly, Sparrow, and Montgomery and Wyly, in pursuance of their fraudulent scheme to effect an apparent transfer of the title to said W. G. Wyly of the Raleigh plantation for a mere nominal price, corruptly procured a false and base apprais-ment of said lands by ignorant and incompetent appraisers. I will ask you, Judge Montgomery, if that is true or false?

A. It is not true; the apprais-ment was left entirely to the redorder, as is always the case; the appointment was made in the usual way.

Q. It is alleged in the bill that this false and base apprais-ment was made at the town of Floyd, remote from the river, by ignorant and incompetent appraiser. I will ask you, Judge Montgomery, where the town of Floyd is?

A. The town of Floyd is on the bank of Bayou Macon, in the parish of West Carroll.

Q. Was it the county site of the parish of Carroll, and in what part of the parish was it situated?

A. It was the parish site of Carroll parish, situated about the middle of the parish.

Q. Is it customary and usual in the practice of law in this parish for the recorder of the parish to appoint the appraiser and take the inventory, and isn't — the almost universal custom for the

455 gentlemen to examine place himself—go with the appraisers himself?

A. It is customary for members of the bar to let the recorder make the appointment of appraisers, but when there is a large amount of personal property to be appraised, which requires inspection by the appraisers, why, then the recorder generally went to the plantation to take it with them.

Q. How were the slaves appraised before the war; was it customary to appraise them on the premises or at the court-house—the slaves and mules?

A. They were generally appraised on the plantation; when there were slaves attached to the plantation they were generally appraised on the plantation.

Q. But overflowed lands like the Raleigh plantation in 1868 were usually appraised at the recorder's office in the parish, were they not?

A. Well, I believe they were generally.

Q. It is alleged in the bill that upon the pretext that the sale was necessary to pay debts said confederates obtained an order of sale of said plantation, pretending that said debts amounted to forty-six thousand dollars ($46,000), one of the alleged debts being six thousand dollars ($6,000), due Sparrow & Montgomery, attorneys of the estate. Is that true or false? That is the charge—that there was a mere pretext and the in-uendo that these were not *bona fide*

456 debts. Is that statement true or false?

A. No, sir; that is not true; the debts were all genuine *boni fida* debts, every one of them.

Q. I will ask you whether or not there was any pretext or anything of that kind—were they all actual debts existing at that time?

A. They were existing debts at the time.

Q. Judge Montgomery, it is alleged in the bill that in pursuance of said fraudulent scheme said confederates obtained an order on the 17th of September, 1868, for the sale of said plantation for cash; that after several days' advertisement in an obscure paper, covertly and without the knowledge of your oratrix or her husband, said plantation was on the 20th of October, 1868, fraudulently adjudicated to W. G. Wyly for twenty-five hundred and thirty-three dollars and five cents ($2,533.05). Is the insinuation contained in that allegation true or false?

A. The allegation in that petition is entirely a mistake; as respects the advertisements, the property was duly advertised in the regular parish paper the number of times required by law, and more, I think; and the property was adjudicated to W. G. Wyly without any combination at all with him or anybody else. If anybody else had bid more than Wyly did he would have got it.

Q. I will ask you, Judge Montgomery, whether there was any conspiracy or confederation in this whole business as charged in this bill?

457 A. There was not nothing of the kind.

Q. Was it an open sale at public market, at a public place—the door of the court-house?

A. Yes, sir.

Q. Was everything conducted fairly and honorably at that sale?

A. Yes, sir; it was. Everything was done fairly. As I stated before, everything was open for anybody to bid that wanted to do so. Mr. Craig came there afterwards—after the sale was over—if he had come there before he would have had a chance to bid in the property if he had desired to do so.

Q. Had you any knowledge at the time the property was adjudicated that Mr. Craig desired to buy the property, or that he had the ready cash and was prepared to bid at the sale?

A. I cannot say that I did. I did not know it until after he came there. I did not know anything about that, because if I had I would have delayed the sale until the last moment—until 4 o'clock.

Q. Judge Montgomery, was the sale of the Raleigh plantation by Mr. Egelly, administrator, conducted as sales usually are, and strictly in conformity with the law as it is understood by members of the bar and people of this parish?

A. Well, it was conducted in the usual mode of making such sales; so far as I remember, I think the forms of law were observed.

458 Q. Are you cognizant or were you cognizant of any fraud in this whole business, so far as you know?

A. There was none whatever; there was no bargain. There was no fraud of any kind whatever; anybody in the world had as perfect a right to bid for the property as Judge Wyly did. The property was cried for the usual length of time of sales of that sort. Wyly bid the value of the apprais-ment and the property was knocked off to him.

Counsel for complainant, in pursuance to the agreement as to the time for making objection, now reserves all legal objections and exceptions to each and every one of the foregoing interrogatories and answers of witnesses now under cross-examination, and specially objects to the introduction of the deeds of sale offered in evidence by counsel for defendant.

Redirect examination by Mr. SAUNDERS:

Q. Judge Montgomery, how many mules and how much personal property did Dr. Carson replace upon the Raleigh plantation?

A. I have no idea; the family brought them back. I don't know how many there were. They brought them back from Texas with them after the war.

Q. Do you know what number of mules and what amount of personal property was on the Raleigh plantation at the time Mr. Boyd left it?

459 A. No, sir; I don't know how many there were.

Q. Can you tell how much there was at the time Mr. Egelly was appointed administrator?

A. There was nothing there; no personal property at all.

Q. Had you been upon the plantation?

A. I had passed through it twenty (20) times, since the public road was right through the place.

Q. Are you familiar with the country in that part of the parish?

A. Yes, sir; and have been for a good many years.

Q. What is the distance from Airley plantation to Raleigh plantation?

A Three (3) miles and upwards, I think.

Q. What is the distance from Carondelet plantation to Raleigh plantation?

A. About a mile to a mile and a half; it lies in the rear of Raleigh plantation.

Q. When did the levee in front of the Raleigh plantation break in 1867?

A. It broke in March, I think—early in the month of March; I think it was in March; it might have been the first of May; my recollection is it was in March.

Q. How much of the Raleigh plantation was overflowed that year?

A. Well, sir, I think every foot of it; I went over it in a skiff. I was out there frequently.

460 Q. How much of Carondelet plantation was overflowed that year?

A. Nearly every foot of it.

Q. When did the levee in front of the Raleigh plantation break in 1868?

A. I think it was down all the time from 1867. I don't think it had been put up. It was not, as I remember.

Q. How much of the Raleigh plantation was overflowed in 1868?

A. I don't remember how much.

Q. How much of "Carondelet" was overflowed in 1868?

A. I don't know how much of it was overflowed in 1868. I recollect distinctly about 1867, because I was living there. I was living here in 1868. I was living on the adjoining plantation. I recollect distinctly about 1867 because I was deer hunting on the "Foster" place in 1867, and went across Raleigh in a skiff.

Q. I show you a petition filed by Mr. Charles R. Egelly on the 17th of Sept., 1868, praying for authorization to sell the property of the Raleigh plantation—the property of James Raley's succession. Is that petition in your handwriting?

The witness, after looking at the document referred to, answers:

A. Yes, sir; that is my handwriting.

NOTE.—The counsel for complainant says he will furnish certified copies of said petition.

461 Q. Did you advise Mr. Egelly to file that petition?

A. I filed it for him. I recom-ended, or rather I asked him, to present the petition to the court for a sale of the property?

Q. Was the object of this sale to pay the creditors mentioned in that petition?

A. To pay all the creditors, and the money to be distributed according to their rank—according to the rank of their claims.

My claim was superior to any of the claims of the other creditors.

Q. Judge Montgomery, did you say that cotton plantations at forced sales in 1868 did not bring their intrinsic value?

A. I will say this, that they did not bring as much as people were frequently selling them at private sale.

Q. Did the fact that the levee was down at the time of the sale cause any diminution of the market value of plantations?

A. O, yes; because if the levee did not go up the places would not be worth having.

Q. Did you say that you bid in the Airley plantation for other persons and not for yourself?

A. Yes, sir.

Q. Did you ever pay the price that is mentioned in that act of sale?

A. It was settled in some way. I don't remember whether I paid the actual cash or not, but it was settled in some manner. I
462 don't remember now exactly how it was done.

Q. When did you receive the claim of August Belmont for collection?

A. I don't remember, though I received it long previous to that sale of the property; I had it a good long time before that.

Q. Was it put in your hands before or after the war?

A. After the war.

Q. Did he instruct you what steps to take in order to collect this claim?

A. He never gave me any instructions at all.

Q. Did he particularly request you to obtain a sale of the Raleigh plantation?

A. No; he gave me no instructions about the claim one way or the other.

Q. Did you inform him that you were applying for an order to have the place sold?

A. No; I don't remember that I did. I did not inform the creditors when I was going to do anything of that sort; I never consulted the creditors when I intended to proceed, as to getting out orders of sale, *and* etc., of the property. I considered that part of my duty to my clients in making their collections. I never waited to ask a creditor whether I should get out an order of sale.

Q. You can't state positively, then, whether or not you informed Mr. Belmont that you had had Mr. Egelly appointed administrator and had advised him to sell Raleigh plantation?

463 A. No. I know positively I never informed him about Mr. Egelly's appointment. I don't remember ever writing to him that the property was to be sold. I know positively I did not write to him about Mr. Egelly's appointment.

Q. When did you last correspond with Mr. Belmont about his claim?

A. Well, sir, that is impossible for me to say; it was long previous to the sale; it was shortly after the war closed.

Q. Can you tell whether or not you wrote to Mr. Belmont to inquire whether or not he desired to buy the Raleigh plantation?

A. I don't remember whether I did or not.

Q. Did you at any time receive instructions from Mr. Belmont not to buy in the Raleigh plantation?

A. No, sir.

Q. Judge Montgomery, did you or Mr. Egelly receive any money paid by Judge Wyly for the Raleigh plantation in October, 1868?

A. It was settled by Wyly in some way or other; I don't remember how. I don't know how it was done; I believe he settled with Egelly and I credited it on the amount of my claim, after paying court charges. I don't know how Wyly made the settlement. I settled with Egelly by crediting the amount on my claim. I suppose the records will show how it was done. Wyly may have settled with me personally; I am not sure.

464 Q. Were you acquainted with John W. Hays?

A. Yes, sir.

Q. Were you acquainted with Micheal Gingery?

A. Yes, sir.

Q. Where did they live?

A. They lived over about Floyd—about the town of Floyd. Hays had a plantation in the country and lived on it. Gingery lived in the town, I believe.

Q. Did you regard them as competent to appraise a valuable cotton plantation on the river?

A. Well, sir, they were both of them familiar with the run of property. They had both lived in the parish a long time. Hays was a planter and had lived in the swamp himself; had his own property. I considered Hays a good judge of property, as good as anybody. Gingery was a man of good sense, a very honest man. He had lived here in this country for a long time. I would take him to be as fair an appraiser as anybody.

Q. From whom did you acquire the "Out Post" plantation?

A. It was put up and sold at public sale. I am not sure; it has been so long ago. I did not charge my memory with it, but the records will show exactly how I got it.

Q. I asked you from whom you acquired it?

A. It was at public sale.

Q. Did you buy it for yourself or for the benefit of others?

465 A. I had no instruction about it. The property was put up and I was requested to buy it.

Q. When you resold it did you demand any more for it than you paid for it?

A. I did not demand any more for it than I had paid for it.

Q. Did you resell it to any person that had requested you to buy it?

A. I think I sold it to Dr. Bowmar, agent.

Q. I did not ask you to whom you resold it, but whether you resold it to the parties who had requested you to buy it?

A. No; I did not.

Q. Was Dr. Bowmar an agent or representative of those parties?

A. He was, Dr. Bowmar was, their agent.

Q. Did you sell it to Dr. Bowmar?

A. Yes; I sold it to him.

Q. As the representative of the parties for whose benefit you bought it?

A. I bought it — public sale and sold it back to Dr. Bowmam as agent of the parties he represented.

Q. You did not buy the place for your own benefit?

A. No, sir; I did not; I did not want it; I bought it because I was requested to buy it.

Q. My question is, Did you not substantially resell it to the parties who requested you to purchase it; did you not resell it to them?

A. Bowmar represented one-half (½) interest in the place; it was sold to them. I think they bought the balance of it; I am not sure. These parties owned one-half (½) interest in it. I bought the other half and sold it to them.

Q. Were you the attorney for the Balfour succession?

466 A. No, sir; I was not. I was the attorney in one suit of Louis Balfour, but not for the succession at all.

Q. Was not the purchase of the Balfour place by Louis Balfour an arrangement for family convenience?

A. I know nothing in the world about it; I don't know how that was done. Mr. Goodrich was the attorney for the succession.

Q. Was three dollars ($3.00) an acre considered a fair value for that place when it was sold?

A. It was a very fair sale at auction.

Q. I asked you if three dollars ($3.00) was a fair price per acre for that land?

A. All I can answer is, if I owned the place I would not have taken three dollars ($3.00) for it, but if I was going to buy it I would not have given three dollars ($3.00) for it—not over three dollars ($3.00).

Q. Were you the attorney of the succession of Jonathan Morgan?

A. No, sir; I was not. I may have had something to do with it, but I was not the attorney or adviser of the estate.

Q. Do you know whether the sale of the Morgan plantation, to which your attention was called this morning by counsel for def't, was an arrangement for family convenience?

A. I do not. I think it was a public sale, at which anybody had the right to bid that wanted to.

Q. Do you recollect whether the levee in front of the Bass place, purchased by Judge Wyly in 1868, was up or down?

467 A. My recollection is it was down; I know it was badly overflowed in 1867. It broke in 1867. I don't think it was put up till 1869.

Q. You say it broke in 1867?

A. Yes; it broke in 1867.

Q. Was the levee in front of that place up in 1866?

A. I think it broke in 1866; they put it up that fall, a portion of it.

Q. What was the condition of the Bass place in 1868?

A. Well, there were a great many logs on it; the ditches were all filled up; there was sediment all over it; no fences or houses hardly.

Q. Was the residence in a position of security in 1868?

A. Yes; it remained so for some time afterwards; I remained there during the big overflow of 1867, which covered the whole plantation with sediment.

Q. Has the Bass plantation been as badly overflowed as the Raleigh plantation?

A. Yes; I think it was worse, if anything; it was just as bad.

Q. Was there any sand ridges on the Bass plantation in 1868?

A. Yes, sir; after the overflow of 1867 there were a good many sand ridges; the ditches were all closed.

Q. Judge Montgomery, were you the attorney for the succession of James G. Carson?

A. Yes, sir.

Q. When you resold the Airley plantation to whom was the price of it paid?

468 A. The notes were given to me and I transfer-ed them to the heirs of Carson; finally they all got into the hands of one of them, somehow or other. They finally got into the hands of William Carson.

Q. Did you say that the purchase of the "Airley" plantation was an arrangement for family convenience?

A. There was no contract between me and the family, but I bought it intending afterwards to give them the benefit of my purchase.

Q. To whom did you resell the Airlie plantation?

A. I sold it to T. B. Rhodes.

Q. Was any portion of the price paid by Rhodes paid to any other person besides the Carson heirs?

A. No, sir; not a cent.

Q. Who were the creditors of the succession of Carson?

A. I don't remember them all; they did not present their claims. There was one creditor I know by the name of Hunt McCauley.

Q. Was Judge Wyly one of the creditors of the succession of Carson?

A. Not that I know of; he never presented any claim against the succession.

Q. Do you know whether, directly or indirectly, any portion of the price paid by Rhodes for the "Airley" plantation has gone to Judge Wyly?

A. Not that I know of; I have not the slightest idea.

Q. Are you sure that Judge Wyly never informed you of his claim, if any he had, against the succession of James G. Carson?

469 A. He never presented it to me—that is, I have no recollection of his deing so.

Q. Did you not apply in the succession of Carson for an order of sale of the "Airley" plantation and the "Erie" plantation?

A. Yes, sir; I did apply for it.

Q. Did these plantations belong to the succession of Carson?

A. Yes, sir.

Q. Was there any opposition that you can recollect made to that sale?

A. None that I know of.

Q. Examine this paper, entitled Opposition of W. G. Wyly *et als.* in the succession of James G. Carson, endorsed "filed Oct. 21st, 1868; R. J. Lowder, deputy clerk." Do you recollect that opposition?

A. I don't remember anything about it; it was not forced—there was no opposition served on us.

Q. Do you remember any arrangement pursuant to which the opposition was not insisted upon?

A. No, sir; I do not; I remember this —that the family or some of them bought the property.

Q. Bought which property?

A. The Airlie place; I don't remember now who it was.

Q. Was the sale of those two (2) plantations of the Carsons estate made in the face of that opposition, before it had been disposed of?

A. I can't say; I know positively it did not stop the sale. I don't know whether it was served on us; I don't remember now.

470 Q. You don't recollect anything about the opposition?

A. No, sir; I don't remember anything about the opposition.

Q. Do you recollect who were the appraisers of the "Airley" and "Erie" plantations when they were sold in 1868?

A. I don't remember; it seems to me old man Valentine was; I don't remember; I wanted him.

Q. Will you examine that document which was filed in the succession of Carson and which was the inventory taken on the 18th of October, 1868, and say who were the appraisers (handing witness paper referred to)?

NOTE.—Witness, after looking at the paper in question, answers—

A. Micheal Gingery and John W. Hays.

Q. Will you state how Micheal Gingery signs that appraisement?

A. I see he has made his mark here.

Q. Judge Montgomery, was Micheal Gingery the appraiser in the succession of Morgan?

A. I don't remember who was the appraiser in that case. I believe he was, though; the proceedings will show that, if he was.

Q. Do you remember how the inventory, in which he assisted as appraiser, was signed?

A. I presume it was signed the same as that, though I don't know (referring to the inventory in the succession of Carson).

Q. Judge Montgomery, were you surety upon the bond given by Egelly when he was appointed administrator, in Sept., 1868?

471 A. I presume I was if the record says so. I think I was.

A. Will you examine that receipt, dated "Oct. 20th, 1868, signed by "Sparrow and Montgomery," endorsed "No. 1" on its back? Is that in your handwriting (handing witness the document referred to)?

NOTE.—Witness, after examining the document handed him, answers—

A. That is in my handwriting.

Q. Judge Montgomery, will you examine that receipt endorsed No. 5, dated April 10th, 1869, signed J. W. Montgomery, and state whether that is in your handwriting (handing witness receipt referred to)?

NOTE.—Witness, after examining receipt handed him, answers—

A. Yes, sir; that is my handwriting. It is a receipt from Charles R. Egelly, administrator.

Q. Will you examine this receipt, dated "Oct. 20th, 1868," signed "Sparrow & Montgomery," endorsed "No. 3," being a receipt from Charles R. Egelly, administrator of the estate of Raley, and say whether or not it is in your handwriting?

NOTE.—After examining document referred to, witness answers—

A. That is my handwriting; yes, sir.

Q. Did August Belmont have a mortgage on the Raleigh plantation?

A. I believe he did have a mortgage on part of it.

472 Q. Do you remember on what portion of the Raleigh plantation this mortgage existed?

A. I don't recollect distinctly; I think it was on four or five hundred (400 or 500) acres of it.

Q. Judge Montgomery, when was it you instituted suit against Mr. Belmont?

A. I don't remember the precise date; if you have got the petition you can see exactly when it was filed.

Q. How long prior to the institution of that suit did you corespond with Mr. Belmont?

A. I don't remember what time; I never could get any answer from him. I suppose it was because I did not send the letters to any particular address, which I did not know was necessary at that time. I just presume so now. If letters were sent to the general delivery of the New York post office they were not delivered by the letter-carriers unless addressed to a particular number.

Q. Was that suit against Mr. Belmont begun by attachment against the property?

A. Yes, sir; attachment of the judgment.

Q. Had you any conference with Judge Wyly in regard to the institution of this suit?

A. Not a particle; he had nothing in the world to do with it.

Q. Was he informed of the institution of the suit?

A. I don't think he was; there was no cause for me to consult him in regard to it.

Q. Do you remember who was the surety on the attachment bond given by you in that case?

A. I do not.

473 Q. I now hand you the attachment bond given by you in the case of J. W. Montgomery against August Belmont, endorsed "filed Oct. 19th, 1868;" will you be kind enough to state

who is the surety on that bond (handing witness bond referred to)?

NOTE.—Witness, after examining the bond, answers—

A. I see Wyly is the surety on that bond.

Q. Is that in the handwriting of W. G. Wyly?

A. Yes, sir; it is, but Wyly had nothing to do with the suit, except signing this bond. I will qualify my answer in that way.

NOTE.—Witness, on being shown the bond referred to, states he was mistaken in saying Wyly had nothing to do with the suit of J. W. Montgomery *vs.* August Belmont.

Q. Will you examine this paper which is endorsed "subrogation, filed Nov. 10th, 1870," in the suit of J. W. Montgomery against August Belmont, No. 5735, and state if that paper is the evidence of the sale of that judgment that you spoke of yesterday by you to Judge Wyly?

A. Yes, sir; I made that sale to him. We made a verbal sale before I executed this.

Q. Is that your handwriting (handing witness paper referred to)?

NOTE.—Witness, after looking at the paper handed him, answers—

A. Yes, sir; that is my handwriting—the whole of it. We had agreed verbally upon the price to be paid.

474 Counsel for complainant offers in evidence certified copy of the transcript in suit styled J. W. Montgomery against August Belmont, No. 5735 of the docket of the district court, parish of Carroll, petition in said suit having been filed Oct. 19th, 1868. Filed and marked Exhibit "Q."

Counsel for def't objects to the introduction of said document on the ground of irrelevancy.

Q. You say that you and Judge Wyly had a verbal agreement before that judgment was sold?

A. Yes, sir; before it was signed we had a verbal agreement. I had a verbal agreement to sell him that judgment; the verbal agree- was afterwards executed and the property sold.

Q. When was that previous verbal agreement entered into?

A. The day previous or maybe the same day; perhaps on the same day.

Q. Judge Montgomery, why was it that you did not cause the cotton claims to be inventoried for the benefit of the creditors you represented when Mr. Egelly was appointed administrator?

Q. I did not know the amount of the cotton claimed; they had never been reported to me. I did not know of any cotton or I would certainly have done it; I certainly have put it down. I did
475 not think it was an honest claim and I don't think so yet.

Q. When did you first hear of that cotton claim?

A. Shortly after the war closed many people were going through the country gathering up evidence. Dr. Bowmar was gathering up evidence for a great many people. All of these cotton claims were

instituted shortly after the war; 1867 and 1868 was the particular time when they were urging cotton claims. I will state furthermore that I heard they (the Boyds) were getting up a cotton claim. I did not believe they had any and I don't believe it now; I believe their cotton was all burnt up.

Q. What is the situation of the Carondelet plantation with reference to the Raleigh plantation?

A. It is about a mile or a mile and a half back of it.

Q. By back of it do you mean nearer into the swamp?

A. Yes, sir.

Question. That is, going directly from the river it would be necessary to cross the Raleigh plantation to get to Carondelet?

A. Yes, sir; though if you went directly back from the river you would never touch Carondelet—that is, going directly back from Raleigh.

Q. Carondelet does not touch Raleigh, then?

A. No, sir; it does not; maybe a section of it does; I don't know positively.

476 Q. Is the land on the Carondelet place of equal quality with that of the lands of Raleigh plantation?

A. Well, yes, sir; some of them are, and some are not so good.

Q. Is there any timber on the Carondelet plantation?

A. Very fine timber; about three hundred and fifty (350) acres of cypress timber.

Q. What is the average price per acre of cypress timber lands?

A. Well, there is no average price to the lands.

Q. Is Carondelet plantation as liable to overflow as Raleigh plantation?

A. Oh, yes; if it overflows Raleigh it overflows Carondelet plantation.

Q. You stated yesterday that you were the owner of Carondelet plantation?

A. Yes, sir.

Q. From whom and when did you acquire it, and how much did you pay for it? How much per acre did you pay for it?

A. Well, I think it was in 1870, some time, I bought it. I bought a good deal of property in this parish at that time. I don't remember the particular time or price I paid for it.

Counsel for complainant offers in evidence certified copy of deed of sale of the Carondelet plantation from G. Malen Davis to J. W. Montgomery; also certified copy of mortgage of Carondelet
477 plantation by J. W. Montgomery to G. Malen Davis, said deed of sale being of date August 15th, 1870, and said act of mortgage being of date December 6th, 1870, filed and marked Exhibit "R."

Counsel for def't specially objects to the introduction of the documents referred to and offered in evidence by counsel for complainant on the ground of irrelevency and also that they are not responsive to any of the issues now pending in this case.

Q. Judge Montgomery, was the cotton crop in this parish in 1866 a good one or a bad one?

The WITNESS: In 1866?

Mr. SAUNDERS: Yes, sir.

A. It was almost a total failure.

Q. How was the crop of 1867?

A. It was just as bad; worse, if anything.

Q. How was the crop here in 1868?

A. The crop in 1868 was better. There were no crops in 1866 and 1867.

Q. How was the crop here in 1869?

A. We had a good crop here; better than in 1866 and 1867.

Q. Was it as good as the one in 1868?

A. Yes, sir; as good; maybe a little better. There was an increase; it then began to get better.

Q. Did you say in your cross-examination that property began to greatly depreciate in 1868?

478 A. In 1867 and 1868 and even it continued to do so up to 1869. There was no demand for property in 1867 & '8.

Q. When did property begin to appreciate sensibly?

A. It began to appreciate somewhat in the fall of 1869. After that the crops and value of land began to get a little better, in 1870 and 1871, and property began to appreciate a great deal more in 1872 and 1873; it began to appreciate in those years. In 1874 it began to drop again.

Q. How much did you buy the "Airlie" plantation for?

A. I think, perhaps, it was about two dollars and a half ($2.50) or three dollars ($3.00) an acre.

Q. How much did you sell it for?

A. I sold it for a good large sum.

Q. Do you recollect how much?

A. I do not; the money was not given to me. I don't recollect the price, though, of course, the deed will show.

Q. When did you buy "Airley" plantation?

A. I can't tell any further then that the deed will show.

Q. Was it at a probate sale made in the succession of James G. Carson?

A. Yes, sir; that was the time I bought it.

Q. How long did you hold it before selling it?

A. I don't remember.

Q. About how long?

A. I can't begin to say how long; the deeds will show you.

Q. It appears by the returns of the sheriff made in the suc-

479 cession of James G. Carson that that property was sold on the 5th of Dec., 1868. Do you recollect whether you held it as much as one year?

A. I don't know; I held it until I made the deed to Mr. Rhodes.

Q. To Rhodes?

A. Yes, sir.

Q. The deed to Rhodes shows that you sold it to him on the 31st of March, 1869?

A. Yes, sir; that is when I sold it to him.

Q. You sold it to Rhodes at that time?

A. Yes, sir; I sold it to Rhodes for a large sum on considerable time, as he said he could make the payments. He had been a captain in the Federal army during the war. He and another man by the name of Sweet had great control over the colored people, and could command any amount of labor they wanted; that was one reason why I sold it to him; he said he could pay it out of the crops; I was satisfied he could, and sold him the place.

Q. Judge Montgomery, do you know anything about the suit of Mrs. Narcissa Patton against Mrs. J. B. Williams?

A. I have no distinct recollection about it, I know there was such a suit.

Q. Were you counsel for either side in that suit?

A. I don't remember; if I was the papers will show.

480 Q. What was the relation existing between Mrs. Patton and the defendant Williams?

The WITNESS: Between Mrs. Patton and Williams?

Mr. SAUNDERS: Yes, sir.

A. She was his mother-in-law.

Q. Do you know whether the sale made in that suit was for family convenience or not?

A. I do not; I don't remember; I don't think it had any connection with that suit all; if it had the papers will show.

Counsel for def't reserves the same objection to the admissibility and competency of the testimony of this witness.

Reserving these objections, counsel propounds the following:

Recross-examination by counsel for def't:

Q. I will ask you, Judge Montgomery, whether when you obtained the signature of W. G. Wyly on the attachment bond in the suit of J. W. Montgomery against August Belmont, Oct. 19th, 1868, whether you explained to him anything about the Belmont matter or whether you communicated to him that the defendant Belmont had a mortgage upon the "Raleigh," or did you explain anything more to him than to ask him to sign your bond?

A. I did not, to my recollection; I did not think it was at all necessary; I simply asked Judge Wyly to go on the bond as I would any other member of the bar I might have met who lived in town; I asked him just as I would have asked anybody else to go upon the bond.

481 Q. Did you explain to him anything about the suit of Belmont against Raley?

A. No, sir; I did not; I did nothing further than what I have stated; I simply asked him to go upon my bond, which he did.

Q. Did you explain any further to him than appears upon the face of the papers?

A. No, sir.

Q. Was there any special motive or reason existing between W. G. Wyly and yourself why he should have been preferred to any other member of the bar?

A. No, sir; there was not.

Q. Was the signing of the bond by W. G. Wyly done in reference to any future litigation, or was any object to be accomplished by him in so doing, or was the procuring of his signature a mere matter of friendship without any motive on his part?

A. There was no special design about it one way or the other. I simply called upon Judge Wyly to sign as I would have called upon any other person present that I knew. Wyly had nothing to do with the case. He had nothing in God's world to do with it. I simply asked him, I say, as I would have asked any other member of the bar who happened to be present.

Q. You simply called upon him to sign the bond as security for yourself?

A. Yes, sir.

Q. Without any conference or understanding at all with reference to the object of the suit or any of the proceedings?

482 A. Yes, sir; I think so.

THOMAS B. RHODES sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Rhodes, what is your age, your present residence, and how long have you resided in this parish?

A. I am thirty-eight (38) years of age; I reside in East Carroll parish; I have resided in this parish since 1866—sixteen (16) years.

Q. What has been your occupation since you have been in this parish?

A. I have been planting—cotton planter—farmer.

Q. On what plantation did you first plant cotton?

A. I was in 1866 on the "Out Post" plantation; 1866 and 1867 on the Illawara plantation; since then on the "Airley" plantation.

Q. Were you renting cotton lands in 1867 and 1868?

A. No, sir; I was not renting at all; I was manager on the place at that time; I was employed up till 1869.

Q. Do you own the "Airlie" plantation?

A. Yes, sir.

Q. When did you acquire it?

A. I bought it in 1869.

Q. What did you pay for it?

A. Forty-seven thousand dollars ($47,000) was the purchase price.

Q. How many acres are there in the "Airlie" plantation?

483 A. At the time I purchased it, about eleven hundred (1,100) acres.

Q. Are you acquainted with the "Raleigh" plantation, now occupied by Judge Wyly?

A. Yes, sir.

Q. What is the quality of the land on that plantation?

A. Very good indeed.

Q. Are the lands on the "Raleigh" plantation inferior to the lands of the Airlie plantation?

A. No, sir.

Q. What was the usual rental per acre obtained in this parish in the year 1868 for cotton lands?

A. I don't know; my recollection is that the lands were worked on the one-quarter (¼) system; there was very little rented in 1868, but I think, as a general thing, they were worked for one-quarter (¼) of the crop; that is my recollection.

Q. What was the value of cotton lands per acre in this parish in 1868?

A. That depends—do you mean for cash; sold at a cash sale, or how?

Q. What was considered to be the value of cotton lands on the Mississippi river in this parish? Suppose, for example, you had been appointed appraiser in a probate proceeding to value the lands of the Raleigh plantation, at what sum per acre would you have valued them in 1868?

484 A. I don't think I would have valued them at less than ten or fifteen dollars ($10 or $15) an acre.

Q. Mr. Rhodes, were you acquainted with Micheal Gingery, of this parish?

A. Yes, sir; I was acquainted with him?

Q. Is he living now?

A. No, sir; he is dead.

Q. Could he read or write?

A. I don't know, sir; I don't know anything about that.

Q. Do you know what has been the average yearly production of bales of cotton of the Raleigh plantation since 1868?

A. No, sir; I don't know the exact number of bales of cotton; I know they made pretty fair crops; as good as any in the country; I don't know the number of bales; some years more and some years less.

Q. Has that plantation been overflowed since 1868?

A. Not until this year.

Q. What was the occupation of Micheal Gingery?

A. He was a carpenter, I believe; I heard that; I supposed he was a carpenter.

Q. Do you think he was a proper person to appoint as appraiser of a plantation—a cotton plantation on the Mississippi river?

A. Well, of my own knowledge, I know nothing about that; I can say from his general reputation I should think not; of my own personal knowledge I know nothing, but from his reputation I should say not.

485 Counsel for def't objects to the testimony of this witness upon the ground of inadmissibility and incompetency—irrelevancy.

Reserving these and all other legal objections counsel for def't propounds the following cross-interrogatories:

By counsel for def't:

Q. I will ask you, Capt. Rhodes, whether or not a great many Northern gentlemen did not come down here in 1866 with a view of trying the experiment of producing cotton with free labor?

A. Yes, sir; a good many.

Q. Was there not a great demand for valuable plantations on the bank of the Mississippi river by these capitalists to try this experiment?

A I think in 1866 there was a good deal looking around for such property.

Q. I will ask you, Capt. Rhodes, if the demand was not so great that the prices ruled very high in 1866?

A. Very high in 1866.

Q. Did you think that "Raleigh" plantation could have been leased out in 1866 just before the levees broke for as high a rental as any of the other plantations?

A. I suppose it could.

Q. Do you know who had charge of the "Raleigh" plantation in 1866?

A. Mr. Pittman was the lessee, as I understood it; I don't know who his partner was.

486 Q. I will ask you what was the value of the rent of the "Raleigh" plantation in 1866 as compared with the value of other plantations about that time?

A. Well, I know that one (1) plantation adjoining "Raleigh" rented that year for twenty-five dollars ($25); I know another that rented for one-sixth (⅙) of the crop; I don't suppose they got five dollars ($5.00) an acre; the "Out Post" place was rented for a portion of the crop; they did not get five dollars ($5.00) an acre; the "Savage" place rented for twenty-five — ($25) an acre; they did not make enough money to pay the expenses of the crop.

Q. Did Col. Starling make crop enough in 1866 to pay his expenses?

A. He did not make crop enough in 1866 to pay the rent; no, sir.

Q. What, probably, did Col. Starling lose per acre on that land?

A. I could not tell.

Q. How much deficiency was there in 1866?

A. That I can't answer; I can say this, it probably cost him twenty-five dollars ($25.00) per acre to cultivate it; probably he lost ten thousand dollars ($10,000); I imagine he did; he told me the cotton he sold did not pay for the rent of the land; the worms destroyed the crop.

Q. Do I understand you to say he lost probably ten thousand dollars ($10,000) by this experiment on that place?

487 A. I think very likely he lost that much.

Q. How many acres were in cultivation?

A. About four hundred and twenty-five (425) acres.

Q. I will ask you if the result of that year's crop in the parish generally was not very disasters to the public?

A. Yes, sir; very disasterous.

Q. I will ask you if in the year 1867 it was not likewise disastrous?

A. Yes, sir.

Q. I will ask you if a great number of these Northern capitalists

that came here in 1866 were not broken up by these disasters of 1866 and 1867, and if many of them did not leave the country in great disgust?

A. I know a good many left the country on account of the disasters.

Q. Do you know of any of them that made any money?

The WITNESS: In those two years?

COUNSEL FOR DEF'T: Yes, sir.

A. I don't know of any person that made any money.

Q. Didn't they generally lose all they invested in that enterprise?

A. I think as a general thing they lost. Every person lost in those two (2) years.

Q. Was not these disasters alike upon the old citizens as well as these Northern capitalists; were they not crushed and ruined by these disasters of 1866 and 1867?

488 A. Well, they all suffered alike; all who planted cotton lost money those years, as far as I know.

Q. What effect did these disasters have upon the cash valuation of these plantations and upon the rental value of these plantations; didn't it knock down the values here?

A. In 1868—when the crop of 1868 was commenced—of course the value of plantations and the rental was very much decreased after those disasters.

Q. What was the condition of "Raleigh" plantation in 1867 and 1868 in reference to its protection from overflow?

A. Well, the levee broke on the upper edge of "Raleigh" in 1867, and it broke at "Hawes-Harris," overflowing the greater portion of "Raleigh" plantation in 1867. In 1868 the brake was still down, but the greater part of Raleigh was not under. I think the water was not so high in the river, still a portion of it was overflowed in 1868.

Q. Do you remember when the levee was rebuilt on "Raleigh" plantation?

A. It was rebuilt in December, 1868, and January, 1869. The contract was let that fall. I remember Kennedy, the contractor, was at my house to see about laborers.

Q. Then do I understand you to say that the Raleigh plantation at the time of the sale, on the 20th of Oct., 1868, was not protected from liability to overflow by adequate levees?

489 A. The levee was down on the front of the place at that time.

Q. I will ask you what was the condition of that plantation in 1868?

A. Well, my recollection is that the tenants left "Raleigh" place in 1868—in the spring of 1868—I think they left; I remember some of them moved to Mr. Newman's; a very small portion of it was in cultivation; I remember that particularly.

Q. I would ask you, Mr. Rhodes, if it was not practically an abandoned place?

A. My recollection is there was no person in charge of the place;

I don't think they undertook to cultivate the plantation that year; that is my idea about it.

Q. Was there any fencing on that place that year?

A. My recollection is there was none; I don't think even the front fence had been put up at that time after the war.

Q. After this plantation had been bought by W. G. Wyly, I will ask you whether or not he re-established the place, erected new buildings, and made other adequate improvements?

A. The plantation has been well improved since he bought it.

Q. Were not the levees put up after the sale to W. G. Wyly Oct. 20th, 1868?

A. Yes, sir; the levees were rebuilt after that date.

Q. After W. G. Wyly had taken possession did he or not
490 go to work to build houses all over the place and spend a good deal of money in refi-ting it—putting it in condition to be cultivated?

A. Yes, sir.

Q. I will ask you if in 1870, by the expenditure of a good deal of capital by W. G. Wyly, if that plantation was not put in thorough repair, a great many houses built upon it, and a great many tenants brought upon the plantation?

A. Yes, sir.

Q. What was its appearance in 1870 as compared with its aspect in 1868?

A. In 1870 or about that time the houses were up and the place in full cultivation, if I remember rightly; at least I think so.

Q. I will ask you whether or not a great deal of capital has been expended from time to time in repairing the place, building new houses, making new ditches, and other improvements by W. G. Wyly since he purchased the property?

A. I suppose so; new improvements have been made, houses erected, fencing, and ditching.

Q. I will ask you, Captain Rhodes, whether the value of that plantation was not greatly enhanced by the rebuilding of the levees after W. G. Wyly purchased it, and by these large repairs and improvements and the introduction of additional laborers and improvements upon that plantation by him?

491 A. Yes, sir; I think it was.

Q. I will ask you, Captain Rhodes, if there is not a very bad caving front upon that plantation?

A. There is now; yes, sir.

Q. I will ask you if there has not been several levees built on the front of that place within your knowledge?

A. Since it was purchased I think there has been two (2) new levees built since that time.

Q. Mr. Beard has testified that he has known the place fifty (50) years; that in the original tract there was sixteen hundred and eighty (1,680) — or thereabouts; I will ask you whether, from your knowledge of the place, there is that much land there now?

A. I think the Dr. told me there was about a thousand (1,000) acres; I don't know anything about the original survey; there might have been sixteen hundred (1,600).

Q. Captain, I will ask you if the assessors in this county were not paid by a percentage upon the valuation of the property in the parish?

The WITNESS: For their fees?

COUNSEL FOR DEF'T: Yes, sir.

A. I don't know that they were.

Q. Do you know how they got their compensation as assessors for assessing property?

492 A. No, sir; when I was tax collector and assessor I think I charged a fee upon the amount collected—I don't remember.

Q. Do you know now whether it is by a percentage or salary?

A. No, sir.

Q. Capt. Rhodes, in the condition that "Raleigh" plantation was in in 1868, if you had been called upon to appraise the property you say you could not have appraised it at a lower price than ten or fifteen dollars ($10 or $15) an acre?

A. Yes, sir.

Q. I will ask you whether the auction value of property is not regulated by the amount the property will bring when exposed for sale at auction at any particular place at any particular time—if that does not fix its cash value in that market—if the price realized at auction sales does not fix the price of the property in that market at that time?

A. It might fix the price; I suppose it does; when it is put up for sale and bid in, why that fixes the price at that time.

Q. Do you understand that to be its auction price on that day?

A. I understand that is what it brings.

Q. The "Raleigh" plantation on the 20th of Oct., 1868, was sold at public auction, at the door of the court-house in this parish, to W.

493 G. Wyly for twenty-five hundred and thirty-three dollars ($2,533.00), or thereabouts; I will ask you whether that price obtained on that day did not fix the auction cash value of that property in that market on that day?

A. I don't see how it could change the value of the property. It certainly did fix the auction value of the property that day, because that is what it brought, but I knew if Mr. Newman had been there he would have paid that much for it.

Q. Paid how much?

A. I think he would have paid ten or fifteen dollars ($10 or $15) an acre and been glad to have done it.

Q. Were you aware that the sale was to take place on the 20th of Oct., 1868?

A. Yes, sir; a few days before the sale I was talking to Mr. Craig about it.

Q. Well, was it advertised?

A. I don't know whether I saw the advertisement or not. I knew it was to be sold.

Q. I will ask you, Capt. Rhodes, whether the condition of the country was not generally very much depressed about that time?

A. It was; yes, sir; certainly; very much.

Q. I will ask you whether or not a change of government took place about that time?

A. Well, the reconstruction measures had gone into effect the spring before that.

Q. Was there not a presidential election pending at that time?

494 A. Yes, sir.

Q. I will ask you whether or not a great many citizens, old citizens in the parish, were very despondent about the political outlook of things about this time?

A. I believe they were very much; yes, sir. I think they were very despondent about the political outlook of the country.

Q. I will ask you whether in 1868 the colored men did not for the first time become an important factor in the element of government by having the right of suffrage?

A. Yes, sir.

Q. Didn't this fact and the apprehension that there would be misgovernment—did not these have a depressing effect upon the old citizens of this parish as to the future outcome of the country?

A. Well, I suppose it did; I have no doubt but it did. I suppose they thought the country had gone to the devil.

Q. Was it not understood about the time of the sale of this Raleigh plantation that Gen. Grant would probably be elected President, and that in effect the country would be Africanized; in other words, was not this idea prevalent among the old citizens at the time referred to?

A. Well, the negroes were in the majority, and, having the majority, it was really Africanized then, before Grant's election. I suppose they did think that way.

495 Q. Didn't the probability of the election of Gen. Grant, as indicated by the elections in Ohio and Indiana in Oct., 1868, have a discouraging effect upon the old residents of this State, and did they not believe there would be misrule and extravagance and high taxation?

A. Yes, sir; I suppose so; it had that effect upon them. They believed that the government of the country would go into the hands of the negroes.

Q. Didn't that have a depressing effect upon the value of property in 1868?

A. I suppose it did; I suppose it had its effect.

Counsel for complainant objects to the cross-examination of this witness, and reserves all legal objections to the same.

Redirect examination by Mr. SAUNDERS:

Q. Capt. Rhodes, did you know anything about the sale of the "Raleigh" plantation to Judge Wyly, Oct. 20th, 1868?

A. I was not present at all. I knew it was to be sold, but I did not attend the sale.

Q. Were you at the court-house on that day?

A. No, sir.

Counsel for def't objects to this testimony on the ground of irrelevancy and inadmissibility.

And neither party offering and being ready to examine
496 any other witnesses this day, I adjourned the examination herein ordered, in the presence of all parties, until Thursday, July 27th, 1882, at the same place.

(Signed) J. B. BEATTIE,
Special Examiner.

Seventh Day's Proceeding.

THURSDAY, *July 27th*, 1882.

CHARLES M. PILCHER sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Pilcher, are you a practicing attorney in this parish?
A. I am, sir.
Q. Were you practicing here in the years 1865, 1866, 1867, and 1868?
A. I was, sir.
Q. Were you ever a member of the legal firm known as Goodrich, Pilcher and Montgomery?
A. I was.
Q. What was the full name of your Mr. Goodrich?
A. Ferdinand Goodrich.
Q. Where is he now?
A. He is dead.
Q. What was the full name of your Mr. Montgomery?
A. Feild F. Montgomery.

497 Q. Mr. Pilcher, will you please examine this paper which purports to be an opposition made by the firm of Goodrich, Pilcher and Montgomery to the appointment of Charles R. Egelly as administrator of the succession of James Raley, and state in whose handwriting it is and whether you recollect anything about it.

A. That is my handwriting. I wrote that document; but I will state in connection with it that Mr. Goodrich had that matter in his hands when I drew this. I can't imagine why I can't recollect more about *of* it. I think he gave me a memorandum and I wrote this, perhaps; that was the last of it.

Q. Do you remember whether Mr. Boyd requested you to make any opposition to the appointment of Mr. Egelly as administrator?

A. No; I can't say that he did. I recollect—have some sort of feeling about it—that if Mr. Boyd did not come here to attend to the matter his business would go by default; that is my notion about it. When this thing was drawn up I drew it up from a memorandum given me by Mr. Goodrich. I have never thought of it from that day to this.

Counsel for def't objects to this evidence on the ground of inadmissibility and irrelevancy.

498 Reserving these and all other legal objections to the evidence of this witness, counsel for def't propounds the following cross-interrogatories:

By counsel for def't:

Q. Did I understand you to say, Col. Pilcher, that your partner at that time, Mr. Ferdinand M. Goodrich, was the legal adviser of Boyd, dative executor, so far as related to your firm?

A. Yes, sir.

Q. I will ask you, Mr. Pilcher, whether or not, among partners in a partnership, it is not the custom for cases to be assorted out or devided up between the members so that special attention or control of one class of cases is in the hands of one attorney of the firm and another lot of cases in the hands of some other member of the firm; in other words, is not the special control of certain cases in the hands of certain counsel, and if you want any special information about the matter you have to see that member?

A. Well, I know that was particularly the fact with the firm of Goodrich, Pilcher & Montgomery. Mr. Goodrich was traveling all the time; he was on the road; he was a good deal in New Orleans; he used to attend to the collecting; he would collect the money and turn over our fee.

Q. Was Mr. Goodrich the attorney of the succession of Raley under Fred. W. Boyd's administration?

499 A. Well, I presume he was; I can't say positively whether he was — not; I think he gave me the memorandum for this paper (referring to the opposition of Boyd); I had so little to do with it that I never even talked with him about it.

Q. Did you understand he was the attorney of Fred. W. Boyd?

A. That was my understanding; yes, sir.

Q. Then your firm were the attorneys of the succession of Raley under the administration of Boyd, and Mr. Goodrich had special control of the business?

A. Mr. Goodrich was the attorney; so far as the firm was concerned, I don't remember about that; Mr. Goodrich had entire control and management of that business.

Q. How do you account for the drawing up of this thing by you, you not being cognizant of the facts?

A. I account for it in this way: Mr. Goodrich sometimes gave me memorandums of things he wanted done; he would just give me a memorandum.

Q. Then you think that was drafted by you at the instance of your partner, F. M. Goodrich (referring to the opposition of Boyd to the appointment of Egelly as administrator), from a memorandum he furnished you at the time?

A. Yes, sir.

Q. What was your custom about backing legal documents that you filed in court?

500 A. Well, I always marked them on the blank part of them, or rather the opposite side; I always marked them on the back. For a long time I have been in the habit of using these printed covers and attaching the suit to them and fastening them with tacks or tags; that is something I have been doing for a long time; I can't say exactly when I commenced doing that; it has

been several years; I found the old way was a very unsafe way of filing papers.

Q. Was that paper prepared and drafted by you pending the application of Charles R. Egelly to be appointed administrator of the succession of James Raley?

A. I presume it was.

Q. From its contents does it purport to have been drafted at that period? Does it appear to have been drafted at that period?

A. Yes, sir.

Q. Is there any evidence in the document itself that it was prepared by you prior to Mr. Egelly being commissioned as administrator?

A. Yes, sir; there is no doubt about that.

Q. Are you certain that that document was prepared whilst Mr. Egelly's application was pending?

A. Yes, sir.

501 Q. Was it ever your custom to file in court a paper like that without some cover or something over it and endorsed on the back?

A. No, sir.

Q. If that document was placed by you in the mortuary papers, where it was found by the present clerk of court, do you believe that it first had a cover on the back of it with the style of the proceeding marked on it?

A. Yes, sir; I do.

Q. Examine the rough edge of that paper at the top. Don't it look like the half (½) sheet had been torn off by some one?

A. Yes, sir; it seems to be a half (½) sheet of legal-cap paper?

Q. If the cover that you speak of *that* was around that document when it was filed could it readily have been removed by tearing it off at the top?

A. Yes, sir. I think if that paper had been filed it would have been filed with something else. I don't see any indication here of that, though perhaps it would have been mixed with some other papers.

Q. Do I understand you to say, then, if you filed that document it must have been filed or written on a full sheet of paper upon which was inscribed the title of the suit?

A. Yes, sir.

Q. Does the paper now seem to have been mutilated or half (½) of the sheet torn off?

A. Yes, sir; the other half (½) of the sheet seems to have

502 — torn off.

Q. Do you think if you prepared that to be filed without a cover that you would have prepared it on a full sheet of paper?

A. Yes, sir.

Q. Are you satisfied, then, that it must have been written on one (1) whole sheet of paper?

A. Yes, sir; there must have been another portion of it.

Q. Can you or not account for that paper being in its present con-

dition upon any other theory than that the sheet was torn off upon which was inscribed the title of the suit?

A. No, sir.

Q. If you prepared that paper to be filed in court was it written upon a full sheet of paper, and upon one side of which you inscribed the title of the suit?

A. Yes, sir.

Q. I will ask you, Mr. Pilcher, looking at that paper in its present condition, does it not present the appearance of a mutilated law document?

A. The paper seems to be worn a good deal.

Q. I will ask you whether the title of a suit is not a part of the document as much as the contents itself?

A. Yes, sir.

Q. Regarded in that light, does this paper appear to have been mutilated by some one?

503 A. I cannot say that this identical paper has been mutilated. If it is the original paper it seems to be mutilated. The part upon which the title of the suit was written that is gone. I can't tell what has become of that.

Q. Is it your opinion that that has been torn off since you prepared that paper?

A. I think it has.

Q. Then do you understand that where a petition is prepared upon one (1) sheet of paper—upon a full sheet of paper, and that seems to have been torn off, separated from it—do you or not regard that as a mutilated document—a mutilated law document?

A. That portion of it; yes, sir.

Q. Mr. Pilcher, examine that paper and see if you see any pencil marks that appear to have been recently placed upon the back of the original paper?

NOTE.—Witness, after looking at the document, says:

A. I see here pencil mark "F. W. B.," ition.

Q. Whose initials do you understand "F. W. B." to be?

A. Boyd's; his name was F. W. Boyd.

Q. Does that penciling on the back of that paper seem to indicate that F. W. Boyd had hold of that paper some time or other?

A. It seems that some one has made a pencil memorandum on the back of that document.

504 Q. Do you know F. W. Boyd's handwriting?

A. I do not; no, sir.

Q. Do you think that penciling on the back is in the handwriting of F. B. Boyd?

A. I can't say that; I have never seen enough of his handwriting to say.

Q. Who would have the greatest interest to mutilate that document?

A. I can't say; I don't know.

Q. Would it be to the interest of def'ts in this suit or to the inter-

ests of complainant to mutilate that document? Would it help the Boyds or help Wyly to mutilate that document?

A. I can't answer that question.

Q. Did I understand you to say, Col., that document seems to be a law document that has been somewhat mutilated by tearing off the title, etc.?

A. Yes, sir.

Q. I will ask you, Col. Pilcher, whether your partner, F. M. Goodrich, when he gave you the memorandum referred to with a view to have you prepare this document, whether you believe he would have do- so unless he had authority from F. W. Boyd, by legal employment or otherwise?

Counsel for complainant objects to this question on the ground that def't's counsel has assumed in his question that the witness has stated as a fact what the witness has not yet stated to be a fact.

505 A. Well, I think he would not have given me the memorandum if he had not been acting as the attorney of Boyd; I don't think he would have given me the memorandum just for me to prepare that paper; I have no recollection of the document, except it is my handwriting.

Q. Do I understand you, Col., to say, then, that in your opinion your partner, F. M. Goodrich, would not have given you that memorandum to prepare that document unless he believed he had ample authority from his client, F. W. Boyd, to do so?

A. No, sir; I don't think he would.

Q. Then if F. M. Goodrich, your partner, suggested this thing to you to prepare that document you think he believed he had ample authority to do so or had been requested to do so?

Counsel for complainant repeats the same objection heretofore made to this line of inquiry.

A. I do.

Q. I will ask you, Col., if you knew F. M. Goodrich long and well?

A. Yes, sir.

Q. You say he was a partner of yours?

A. He was.

Q. In your practice with him have you ever known him to give *a* you a memorandum to prepare a suit, or a document in a suit, wherein he had no authority from his client?

506 A. No, sir.

Q. In other words, have you ever known him to act without authority in a case in which he represented one of the parties?

A. No, sir.

Redirect examination by Mr. SAUNDERS:

Q. Capt. Pilcher, have you any distinct recollection of your partner, Mr. Goodrich, giving you a memorandum from which to prepare that opposition?

A. No, sir.

Q. Where did Mr. Goodrich stay during most of the time in the year 1868?

A. He had his home here; he was a member of the firm of Johnson & Goodrich, who were engaged in commercial business in this parish. He was travelling backwards and forwards. Mr. F. F. Montgomery lived at the parish site, and the papers were sent to him to file.

Q. Who attended to the law business in the courts of this parish?

A. Mr. Montgomery generally filed the papers; any papers that were sent him he generally filed.

Q. Captain Pilcher, had you drawn up the paper which purports to be an apposition to Mr. Egelly's appointment as administrator would you have attented to the matter in court?

507 A. In 1868 everything was at Floyd then—the court-house was there, the parish site was there; no, sir.

Q. Who, then, would have attended to the matters in court?

A. Montgomery.

Q. Had the opposition been drawn up would it have been insisted upon and tried?

A. I have an idea that, as Mr. Boyd did not come here to attend to his business, *that* some plan would have been adopted; that is my idea about it. I have an indistinct recollection that he did not press the matter.

Counsel for def't reserves the usual objections to the competency and admissibility of the testimony of this witness.

F. F. MONTGOMERY sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Montgomery, are you a practicing attorney in this parish?

A. Yes, sir.

Q. Were you practicing here in the year 1868?

A. Yes, sir.

Q. Were you then a member of the legal firm of Goodrich, Pilcher and Montgomery?

A. Yes, sir.

Q. Where is your Mr. Goodrich now?

A. He is dead.

508 Q. Will you examine this document (handing witness a document), which purports to be an opposition drawn up by your firm of Goodrich, Pilcher and Montgomery to the appointment of Charles R. Egelly as administrator of the succession of James Raley, and state in whose handwriting it is, and whether you recollect anything about it?

A. It is Mr. Pilcher's handwriting. I have no recollection about it.

Q. Where were you living in 1868?

A. At Floyd.

Q. Was that then the county site of this parish?

A. Yes, sir; of Carroll parish.

Q. Where was Mr. Pilcher then living?

A. Living here in Lake Providence.

Q. Who filed the papers and attended to the matters in court for your firm?

A. Well, I did mostly, for I resided at the parish site. I did more of that kind of business than they did.

Q. Have you any recollection of this paper having been sent to you for filing?

A. No, sir.

Q. Do you remember having been engaged in an opposition to the appointment of Mr. Egelly as administrator?

A. No, sir.

Q. Do you remember having been employed by Mr. Boyd for the purpose of making such opposition?

509 A. I know I was not; I never saw him until he came here to preach.

Q. Were you living here in 1869?

A. I claimed my residence in Madison, but I really lived in West Carroll; I mean to say, though, I lived here; I claimed my residence in Madison; my family lived there.

Q. Mr. Montgomery, here is the original petition in the suit entitled J. W. Montgomery against August Belmont, filed Oct. 19th, 1868; subjoined to that petition is an order appointing you attorney-at-law, or *curator ad hoc*, to represent the absent defendant, August Belmont, and beneath that order are the words: "I accept the above appointment of *curator ad hoc*. F. F. Montgomery, att'y-at-law." Will you state whether or not that acceptance is in your handwriting?

Counsel for def't specially objects to this question upon the grounds that it is not responsive to the issues pending in this case; that the sole issue to be determined at this stage of the proceedings is whether the plea of prescription is applicable; whether the plea of *res adjudicata* is conclusive of complainant's case; that the case has never been put at issue upon its merits. Counsel for def't

510 specially objects to the persistent effort on the part of complainant's counsel to inquire into the business transactions of other people and to lug into this case inquiries and evidence having no possible bearing upon it whatever; that the Belmont judgment and the question whether F. F. Montgomery was *curator ad hoc* for Belmont in that suit can have no possible bearing on this case and is wholly irrelevent. Counsel for def't reserves these and all other legal objections to the competency and admissibility of this evidence.

A. Yes, sir; it is.

Q. Did you correspond with August Belmont in relation to that suit?

Counsel for def't repeats the foregoing objection and insists that this inquiry, if for any purpose, is designed to put the witness upon his defence; that that suit has no relevancy or bearing upon the issues presented in the pending suit, upon which counsel are now taking testimony.

A. I have no recollection of corresponding with him; I presume I sent him a copy of the petition and order, as I usually did in such cases.

Q. Of whom did you get the address of defendant, August Belmont?

A. I don't recollect whether I got it all; I don't recollect anything about it.

Q. Do you remember having had any conversation with
511 Judge Wyly in relation to that suit, in which you were *curator ad hoc?*

A. No, sir.

Q. Mr. Montgomery, were you in this State in the month of Sept., 1869?

A. Yes, sir; I think I was.

Q. Were you in this parish?

A. I don't know whether I was in this parish or not; I generally followed the terms of court in this parish. I think the fall term of the court in this parish was in Sept.; I was living at Floyd.

Counsel for def't again repeats his objection to the competency and admissibility of the testimony of this witness.

No cross-examination.

CHARLES R. EGELLY sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Egelly, were you appointed administrator of the succession of James Raley in 1868?

A. Yes, sir.

Q. As administrator did you procure in October, 1868, a sale of the "Raleigh" plantation?

A. I think I did; yes, sir.

Q. To whom was that plantation sold?

A. Sold to Judge Wyly, I believe.

Q. Has he ever paid to you any portion of the price of that place?

512 The WITNESS: At the time of the sale?

Mr. SAUNDERS: Or afterwards.

A. No, sir; I don't think he did.

Q. Did you receive from Judge Wyly or from any one representing him the price he paid for "Raleigh" plantation?

A. No, sir; of course it occurred some time ago; I don't remember; as I stated in my previous examination, Judge Montgomery was the attorney of the succession; I expect he would attend to everything of that kind; I think, since I remember of his telling me the matter was all right, that he would receive the money from Judge Wyly. That is about all I can remember of the case.

Q. As administrator, did you pay out any money?

A. No, sir.

Counsel for def't specially objects to the testimony of this witness upon the ground that it is not responsive to any of the issues in this case; that all this testimony is irrelevent; that the sole question before the court and now at issue are those raised in the pleas and exception by the replication thereto; that this long inquiry pursued by counsel on the opposite side can have no possible reference to the issues pending before the court, the facts of which are evidenced by the documents; that — the best evidence; that the documentary evidence is the best evidence of the facts raised by the pleas and exceptions, and that all this parole testimony is inadmissible
513 and irrelevent and ought not to be received.

By Mr. SAUNDERS:

Q. Do you recollect at what time in the morning "Raleigh" plantation was sold?

A. No, sir; I don't remember. I suppose the deed would show. I think so.

Counsel for complainant offers in evidence the deed of sale of J. L. McCarroll to J. W. Montgomery, of date Nov. 28th, 1870; filed and marked Exhibit "S."

Counsel for def't objects to the introduction of this document on the ground of its irrelevancy and inadmissibility, and that it has no bearing upon *upon* the issues of this case as set out in the pleas and exceptions, upon which only the case is now for trial.

Counsel for complainant offers in evidence certified transcript of all the proceedings in the succession of James Raley which relate to the appointment of an administration of Charles R. Egelly from July 16th, 1868; also all papers in said succession which relate to the appointment and administration of Sterling T. Austin.

NOTE.—Document above referred to to be filed in evidence hereafter.

514 JAMES BEARD sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. What is your name, Mr. Beard?

A. James Beard.

Q. Where were you living in the year 1867?

A. I was living on the "Eureka" plantation.

Q. How far is that from "Raleigh" plantation?

A. It joins it.

Q. How much of the "Raleigh" plantation now occupied by Judge Wyly was overflowed in the year 1867?

A. Nearly all of it was overflowed.

Q. How much of the "Raleigh" plantation was overflowed in 1868?

A. About two hundred (200) acres.

Q. Were the buildings washed away and destroyed by the overflow that year?

A. No, sir.
Q. When did the flood subside in 1868?
A. I don't recollect.
Q. Can you say about what time?
A. I was trying to think of something that would recall me to it; it must have been, as well as I recollect, about the 1st of June.
Q. Are you acquainted with the Bass place in this parish now owned by Judge Wyly?
A. Yes, sir.
515 Q. How far is that situated below the town of Lake Providence?
A. It is about three (3) miles.
Q. Were the levees up or down in front of that place in 1868?
A. I think they were down.
Q. How long had they been down?
A. I am not positive as to how long they had been down. I don't recollect whether any levee had been put after the war before 1868.
Q. Had the "Bass" place been overflowed?
A. Yes, sir.
Q. How often?
A. I suppose every year we had high water after 1865; I don't know positively.
Q. What was its condition in 1868?
A. Well, it was in a very bad fix, I reckon.
Q. How was it in regard to the ditches and buildings?
A. The ditches, I reckon, were about filled up with deposit; I don't — there — many buildings left on the place.
Q. Was there a dwelling-house on the place?
A. Yes, sir.
Q. Was that dwelling-house in 1868 within or without the levee?
A. It was outside the levee.
Q. Was there a caving bank there?
A. Yes, sir; afterwards the levee was put up behind the house.
Q. When the levee was put up was the dwelling-house on the river side of the levee or on the land side of the levee?
516 A. On the river side.
Q. Then the levee was run behind the dwelling-house?
A. Yes, sir.
Q. Has Judge Wyly ever moved that dwelling-house?
A. Yes, sir.
Q. Have you been familiar with Raleigh plantation since 1868?
A. Yes, sir.
Q. Has it or not been cultivated since that time?
A. Yes, sir.
Q. About how much of it has been cultivated each year—about how many acres?
A. I don't know how many acres it contains, but I think it has all been in cultivation.
Q. What do you suppose has been the annual production in bales of cotton of that plantation?

Counsel for def't specially objects to this testimony, as it is nothing but the conjectures and suppositions of this witness. It is not competent evidence, as it is not a matter within his personal knowledge.

A. I don't think I can tell; I would think about five hundred (500) would be the average—a fair average.

Counsel for def't objects to the testimony of this witness upon the ground of irrelevancy, incompetency, and inadmissibility.

517 Reserving the benefit of these and all other legal objections, counsel for def't propounds the following cross-interrogatories:

Q. I will ask you about what time the levee was put up on the "Bass" plantation.

A. I think it was 1869.

Q. Why was the levee put up behind the house; was it because the bank was caving?

A. I suppose it was.

Q. What kind of residence was on the "Bass" plantation?

A. It had been a very good house, but I suppose it was badly damaged, having been in several overflows.

Q. Can you describe the building as well as you remember it?

A. Well, I don't know that I can. It was a two (2) story house.

Q. Corinthian columns?

A. I don't know about that.

Q. Slate roof?

A. I don't recollect.

Q. Was there a finer house in the parish than that when it was first built?

A. I don't know. I never was in the house until after Judge Wyly moved it to where it is. It was a very fine-looking house from the outside.

Q. Do you know of a handsomer or more elegant mansion in this parish than that was when it was first built?

518 A. I don't think I did.

Q. Do you remember when Mr. Bass built that house?

A. No, sir.

Q. Was it before or after the war?

A. Before the war.

Q. About how long before the war?

A. I can't say. When the war commenced I rarely ever came to Providence at all.

Q. Have you seen the Bass residence lately?

A. Yes, sir; about a month ago I was in it.

Q. What do you think of the house?

A. I think it looks like a very fine house.

Q. Do you think there is a better one in the parish than that?

A. I think not.

Q. Seems to be finely finished?

A. Very, indeed.

Q. What do you think it would cost, Mr. Beard, from your practical experience, to build such a house as that?

A. Well, I would think between eight and ten thousand dollars ($8,000 & $10,000).

Q. I will ask you, Mr. Beard, about what time the levee was put up on the "Raleigh" place.

A. In the spring of 1869.

Q. I will ask you whether there was any regular levee system in operation in 1868.

A. I think not.

Q. Do you remember when the levee bill was passed—about what time?

519 A. I do not.

Q. Was it prior or subsequent to the purchase of the "Raleigh" plantation by Judge Wyly, Oct. 20th, 1868?

A. It must have been subsequent; I think it was.

Q. Then do I understand you to say subsequent to the purchase of the "Raleigh" plantation by Judge Wyly the levee system was established by the Warmoth government?

A. I think so.

Q. I will ask you whether or not the "Raleigh" levee and the Bass levee were among the first levees put up in 1869 under that system?

A. I think they were.

Q. What effect did the rebuilding of the levees have upon the value of the property?

A. It enhanced its value.

Q. Did it make it possible for the Raleigh plantation to be cultivated with some safety afterwards?

A. Yes, sir.

Q. Mr. Beard, you have had large experience, have you not, in the endeavor to raise cotton with free labor?

A. Tolerably; I have been planting ever since the war.

Q. Has it been a successful or disastrous business, as a general thing?

A. It has been disastrous.

520 Q. Take the number of people that have engaged in the business up to the present time since the war, what percentage of them have been benefited and what percentage have lost by the experiment, in your experience?

A. Fully seventy-five (75%) per cent. have lost.

Q. You mean lost money by their experiment?

A. Yes, sir; lost money planting cotton.

Q. On the whole, has not the cost of production of cotton been greater than the reward received by the people that have been engaged in it since the war?

A. Yes, sir.

Q. Do you know a man in the neighborhood of "Raleigh" plantation that has acquired wealth by his experiment in cultivating cotton with free labor since the war?

A. I do not.

Q. Mr. Beard, I will ask you whether, in your opinion, there has been a plantation in that neighborhood that has proved a source of

great revenue or income since the war to the people who have been trying to plant?

A. No, sir.

Q. As a general thing, have not nearly all the planters become greatly in debt to their commission merchant and other people, and has not the condition of the country become gradually worse on that account?

A. Yes, sir.

521 Q. Have you ever known an enterprise so unfortunate to the people engaged in it as the pursuit of planting has been with free labor since the war?

A. No, sir.

Q. Within your experience, Mr. Beard, up to the present time, do you know of a single planter in the neighborhood of Raleigh plantation that has made any money clear of expenses and outlays?

A. No, sir.

Q. The five hundred (500) bales of cotton you suppose to have been produced annually upon the "Raleigh" plantation, do you or not believe, cost the owner in the way of expenses on the average as much as he could make or as much as he got from the productions of those crops?

A. Yes, sir; sometimes it did not pay.

Q. I will ask you whether or not there are certain times in which these disasters are worse than they are at other times?

A. Yes, sir.

Q. I will ask you whether or not the last two years have not been particularly disastrous?

A. Yes, sir.

Q. I will ask you if you remember what years have been somewhat more profitable or years in which the planters did better than they have on the average?

A. 1868 and '9, 1870 and 1879 were the four (4) best
522 years we have had since 1865.

Q. I will ask you, Mr. Beard, whether or not, as a general thing, taking it all in all, the planters have not lost money by their experiment in planting with free labor?

A. I think so.

Q. Take the "Raleigh" plantation, for instance, do you believe the owner of that place up to the present time has made any money by planting with free labor?

A. I do not.

Q. Do you think that the other place has been a source of profit and net income to the owner?

A. I think not.

Q. Mr. Beard, is it not pretty well understood that every planter in the parish has to make some arrangement with his commission merchant to supply him with money to plant?

A. Yes, sir.

Q. And what is the effect upon the country of this condition of things, this dependance that the planters are placed under to the merchant to raise money?

A. I think it is very bad.

Q. Do you see any satisfactory solution of the problem that is confronting us all at the present time—that is, do you see any mode by which these large plantations can be cultivated profitably with free labor?

523 A. I do not, unless we diversify our crops and raise what we consume.

Objected to by counsel for complainant as specially irrelevant.

Q. I will ask you, Mr. Beard, whether or not under our present system of labor the laborers are very exacting and require good houses and constant repairs and expenditures of money on improvements?

A. Yes, sir.

Q. I will ask you, Mr. Beard, whether or not, where comparatively large crops are made, if, when the expenses are taken out and the bad debts deducted, whether, as a general thing, there is any large in come left for the planter?

A. Very small income, usually.

Q. Did you know Albert Rhoton?

A. I did.

Q. Was he considered an industrious, good man?

A. Yes, sir.

Q. Have you any knowledge of his affairs in winding up his estate after his death, as to whether his experience was profitable or unprofitable in the effort to raise cotton with free labor?

Specially objected to by counsel for complainant.

A. I had.

Q. Did Rhoton plant cotton in the neighborhood of "Raleigh" plantation?

A. He planted "Henderson," about a mile from "Raleigh."

524 Q. As compared with the two (2) places what percentage of value would you give in favor of one (1) or the other of these two (2) plantations?

A. I don't think there is much difference in the quality of the lands.

Q. I will ask you, Mr. Beard, about how many years Mr. Albert Rhoton raised cotton on the Henderson plantation?

A. It was, I believe, eleven (11) years.

Q. About how many acres did he cultivate on that plantation?

A. From five hundred (500) to twelve hundred (1,200); some years he had in more than he did in others.

Q. Was he not one of the largest cotton planters in that neighborhood?

A. Yes; he was.

Q. What year did he die, Mr. Beard?

A. 1878.

Q. Were you engaged to look after and supervise and settle up the affairs of the Rhoton plantation?

A. Yes, sir; I was employed to superintend the taking off the crop and paying the hands.

Q. About what time did he die?

A. He died in September, I think, of yellow fever.

Q. I will ask you, Mr. Beard, whether or not he died before the crop was taken off that year?

525 A. He did.

Q. I will ask you whether or not you have any knowledge—personal knowledge—as to the result of his planting business that year?

A. Yes, sir.

Q. How did the business wind up?

A. The estate was insolvent.

Q. The estate was insolvent?

A. Yes, sir.

Q. Was the proceeds of his crop sufficient to pay his expenses?

A. No, sir.

Q. Then, I understand you to say, after eleven (11) years' experience in raising cotton, his estate was wound up insolvent?

A. Yes, sir.

Q. By his engaging in this planting business?

A. Yes, sir.

Q. I will ask you whether your father, Mr. Isam Beard, does not cultivate a plantation in the neighborhood of Raleigh plantation?

A. He does.

Q. I will ask you whether or not he has had large practical experience as a planter?

A. Yes, sir.

Q. I will ask you what was the result of his experience in raising cotton with free labor since the war?

A. He generally lost money by it.

Q. I will ask you whether or not, year by year, he, like

526 many other good, practical planters, has become poorer and poorer from engaging in that occupation?

A. Yes, sir.

Q. Then I understand you to say, Mr. Beard, that the several plantations contiguous to "Raleigh" plantation as well as "Raleigh" plantation since 1868 have not averaged more than their expenses?

A. I think so.

Q. I will ask you, Mr. Beard, whether you knew Fred. W. Boyd?

A. Yes, sir; slightly.

Q. Has he ever lived with his family on "Raleigh" plantation since the war?

A. No, sir.

Q. Was that considered his domicile in this parish, or did he have a domicile in this parish?

A. I think not.

Q. What disposition did he make of the "Raleigh" plantation in 1866?

A. He and Mr. Pittman planted it together.

Q. What was the result of their experiment, as well as you can judge?

A. They lost a large amount of money.

Q. As far as you could ascertain, then, their business was unprofitable?

A. Yes, sir.

Q. Did they attempt to plant the place in 1867?

A. Mr. Pittman drew out. Dr. Boyd planted a small portion of it.

527 Q. Was that effort attended with more favorable results than in 1866?

A. No, sir.

Q. It was alike disastrous?

A. Yes, sir.

Q. Then about what time did Dr. Boyd break up and leave here?

A. He abandoned it in the fall of 1867; December, 1867, I think.

Q. So far as you could notice or so far as you know has Dr. Boyd ever returned to make this parish his home?

A. I think not.

Q. Did you regard him as being temporary absent from the parish in 1868 or permanently absent?

A. Permanently.

Q. Was he giving any attention to this "Raleigh" plantation in 1868—any personal attention?

A. No; I don't think he did. I think he put it in the hands of Dr. Bowmar, of Vicksburg.

Q. I will ask you whether or not Fred. W. Boyd made any effort, as far as you could see, to pay the creditors of the estate, to perform his duty as dative executor, and to wind up the succession?

A. Not that I know of.

Q. What was the condition of the succession of James Raley, as far as you could ascertain?

A. I was told it was insolvent.

528 Q. Was it generally regarded as an insolvent succession?

A. I think so.

Redirect examination by Mr. SAUNDERS:

Q. Mr. Beard, what do you consider to be the value of an acre of the "Raleigh" plantation now?

A. It would depend as to the price or the manner of the sale, I would think, whether it was a forced sale or not.

Q. I am not speaking of the manner of the sale, but what is its value per acre?

A. If it sold under an execution it would not bring so much; if you would give time you might get a better price.

Q. What would you consider it worth if you owned it?

A. I would consider it worth twenty-five or thirty dollars ($25 or $30) an acre.

Q. Mr. Beard, here is a deed from C. M. Beard and husband to Wm. Craig, of date Jan'y 15th, 1868. Will you look at it and state if you are familiar with the lands therein referred to (handing witness deed referred to)?

Counsel for defendant specially objects to this document and the testimony of the witness in relation thereto, because the same is irrelevent and not admissible under the issues upon which this case is now at issue, and counsel for defendant also reserves all
529 other legal objections to the testimony of this witness and the introduction of this document.

NOTE.—Counsel for complainant reserves all legal objections and exceptions to the questions propounded and to the answers elicited on the cross-examination of this witness.

Answer. Yes, sir; I remember this place.

Q. Where is that land situated, sir?

A. It is bounded by the land of Judge Wyly, C. M. Beard, "Henderson" place, and the "Carondelet" place.

Q. Are the lands that you refer to as being Judge Wyly's the "Raleigh" plantation?

A. Yes, sir.

Q. Is the land that was sold to Mr. Craig by this deed of equal quality as the lands of "Raleigh" plantation?

A. About the same.

Q. How large is the tract that was sold to Mr. Craig?

A. About one hundred and fifteen or one hundred and sixteen (115 or 116) acres. The deed calls for one hundred and seventeen (117) acres.

Q. Do you know what price he paid for it?

A. Between twenty and twenty-five dollars ($20 and $25) an acre.

Counsel for complainant offers in evidence deed referred to, being a deed from C. M. Beard and husband to Wm. Craig, of date Jan'y 15th, 1868; filed and marked Exhibit "T."

530 Counsel for def't specially objects to the introduction of this document on the ground of irrelevency and inadmissibility under the pleadings.

By counsel for def't:

Q. Mr. Beard, do you know the circumstances under which that trade took place; how it was? If so, please (explain it) state them.

A. Yes, sir.

Q. Was this a sale for cash or was it a mere arrangement to settle an old debt that your father owed Mr. Craig before the war? Please explain.

A. It was in settlement of a debt he contracted with Mr. Craig during the war.

Q. Was it in the nature of a compromise or was it a regular up-and-down cash sale?

A. It was a compromise.

Q. I will ask you whether or not after the planters had been broken up by the war and when they were in debt to different people, whether or not an arrangement like this to secure an old debt was not considered very honorable?

A. I think it was; yes, sir.

Q. I will ask you whether the price of property in that deed, it being merely a compromise, could fairly be considered as its cash value in 1868?

A. I hardly think it could.

Q. Do you understand that price as indicating what that
531 property in that deed of sale would have brought at auction for cash money?

A. No, sir.

Q. Do you think, on the 15th of Jan'y, 1868, if that property had been put up at auction and sold for cash it would have brought that much; do you think it would have commanded that much in ready cash at a forced sale?

A. I don't think it would have brought that much, but I don't know really what it would have brought at a forced sale.

Q. Were there many land buyers in the country at that time?

A. Not that I know of.

Q. Was there much demand for land at cash sales at that time?

A. I think not.

Q. Mr. Beard, I will ask you, in your opinion, if, in Jan'y, 1868, that property had been exposed for sale at auction, in view of the financial condition of the parish, what do you think it would have sold for?

A. Well, I really can't tell; I have no idea.

Q. What have you known similar lands sold for about that time under the hammer?

A. Well, I don't know; I can't say.

Q. Did any of your neighbors have money—ready money—at that time to buy lands with?

A. I think not.

Q. Wasn't it all they could do to raise sufficient money to raise or plant a small crop?

A. Yes, sir.

532 Q. Wasn't about that time as gloomy a period as we have had since the war, unless, perhaps, in some localities at the present time?

A. Yes, sir.

Q. Do you believe there was a man in that neighborhood at that time able to buy a plantation, put up the cash, at a forced sale, for as much as five dollars ($5.00) an acre?

A. I don't recollect positively who was here in 1868. I don't know positively whether they could or not.

Q. Do you believe anything more than a mere nominal price could have been obtained at that time for a cotton plantation for cash?

A. I don't know; I don't recollect of any lands selling at that time except this one sale. I can't say about that. I don't recollect so distinctly. I know times were very hard about that time. I don't really know what lands were worth at forced sales.

Q. Do you believe, Mr. Beard, that the price set out in that deed of sale from your father to Mr. Craig is a just and fair criterion of the auction value of that land at the date that sale took place?

A. No, sir; I don't think it was.
Q. Had it any reference to the actual cash value?
A. I don't think it had.
533 Q. How did you understand that arrangement?
A. As a compromise.
Q. Merely a compromise to pay an old debt?
A. Yes, sir.
Q. Have you ever known a country where such great fluctuations in the value of property have occurred as have taken place here since the war?
A. I can't tell. I never lived anywhere else.
Q. Has there not been great fluctuations in the cash value of lands?
A. Yes, sir.
Q. Take the "Out Post" plantation as an example; what do you think has occurred in the history of that plantation in the last two years (2) in regard to its auction value?

Counsel for complainant specially objects to this question on the ground of its irrelevency.

A. I don't suppose it is considered as valuable as it was two (2) years ago.
Q. What was its condition two (2) years ago?
A. It was in a pretty high state of cultivation.
Q. How many acres were cultivated?
A. About a thousand (1,000).
Q. Was it well stocked with labor, implements, and mules?
A. Yes, sir; tolerably well supplied.
Q. Was the outlook reasonably encouraging at that time?
A. Yes, sir.
534 Q. What is the outlook now on that plantation, so far as the pecuniary interests of the gentlemen who have been cultivating it are concerned?
A. It is very gloomy.
Q. What gentleman was cultivating it in 1880, as well as you recollect?
A. Geo. A. Barham.
Q. Did he seem to be in a prosperous condition, and was he an industrious gentleman?
A. Yes, sir.
Q. What is the condition of Mr. Barham now?
A. He is broken up.
Q. What broke him?
A. Trying to cultivate a plantation.
Q. What was the immediate cause of his becoming embarrassed?
A. Poor crops and overflows.
Q. What would that place sell for now, Mr. Beard, in your opinion, at an auction sale, for cash?
A. I can't tell.
Q. At what price per acre do you believe the "Out Post" plantation would bring at an auction sale if forced upon the market at the present time?

A. Well, a portion of it sold about two (2) months ago. I think it was an auction sale, it was sold by the sheriff; it brought a great deal more than I thought it was worth; I don't exactly recollect the amount it sold for.

535 Q. I will ask you, Mr. Beard, if there is not a great difference, owing to the want of money in the country, between its intrinsic value and what it would bring at auction if forced upon the market?

A. Yes, sir; there is.

Q. Have you known of any lands in the parish at auction sale to sell, except at a very low figure, for cash?

A. I don't know of any sale except that one.

Q. Do you know the "Airley" plantation?

A. Yes, sir.

Q. What is the condition of that plantation now?

A. It is in a very bad fix.

Q. The levee down?

A. Yes, sir.

Q. Overflowed?

A. It has been up to within a day or two (2) past.

Q. Any arrangements made to put the levee up?

A. Not that I know of.

Q. What would that property sell for in the market at a forced sale at the present time for cash?

A. I have — idea.

Q. Would it bring, if exposed at public auction here, as much as five dollars ($5.00) an acre cash?

A. I don't know.

536 Counsel for def't offers in evidence the record of suit styled W. W. Carson *vs.* T. B. Rhodes, No. 6203 of the district court, parish of Carroll; filed and marked Exhibit "U."

Counsel for complainant objects to counsel for def't offering now any of his own testimony before the testimony of complainant has been taken, and counsel for complainant reserves the right to rebut this testimony when he comes to offer his testimony in rebuttal. Counsel for complainant also reserves all legal objections to the admission of this document.

Q. I will ask you, Mr. Beard, whether or not the plantation referred to in that document is not the "Airley" plantation about which you have been interrogated?

A. I think it is.

Q. Is that plantation in the neighborhood of "Raleigh?"

A. Yes, sir; about four (4) miles above.

By Mr. SAUNDERS:

Q. Mr. Beard, was the sale of the one hundred and seventeen (117) acres by your father to Mr. Craig made without any reference to the value of the land?

A. I don't know as it was; he owed Mr. Craig twenty-five hundred dollars ($2,500), and he agreed to give him this peice of land to

pay the debt; Mr. Craig agreed to allow him that much for it.

537 Q. Was the land considered to be worth the amount of the debt?

A. I don't know about that.

Q. Did your father own other lands besides that he sold to Mr. Craig?

A. Yes, sir; this peice that Mr. Craig got was a portion of the lands now owned by C. M. Beard.

Q. Was this peice given by your father to Mr. Craig in satisfaction of Mr. Craig's debt?

A. Yes, sir.

Q. It was taken from a larger tract of land owned by your father at the time?

A. Yes, sir.

And neither party offering and being ready to examine any other witnesses this day, I adjourned the examination herein ordered, in the presence of all parties, until Friday, July 28th, 1882, at the same place.

(Signed) J. B. BEATTIE,
Special Examiner.

Eighth Day's Proceedings.

FRIDAY, *July 28th*, 1882.

Counsel for complainant offers in evidence certified copy of deed of sale from the succession of Dr. James G. Carson to J. W. Montgomery, of date Dec. 9th, 1868; filed and marked Exhibit "V."

538 Counsel for complainant also offers in evidence certified copy of deed of sale from J. W. Montgomery to Thos. B. Rhodes, of date March 22nd, 1869, both of said deeds being deeds of sale of "Airley" plantation; filed and marked Exhibit "W."

Counsel for def't objects to the relevancy and admissibility of the documents just offered in evidence as they are not responsive to any of the issues now pending in this case.

Counsel for complainant offers in evidence certified transcript of all proceedings appertaining to the appointment of Chas. R. Egelly as administrator of the succession of James Railey and of his proceedings as administrator of said succession; filed and marked Exhibit "X."

Also certified transcript of the proceedings relative to the appointment of Sterling T. Austin as administrator of said succession; filed and also marked Exhibit "X."

Counsel for def't reserves all legal objections to the competency and admissibility of said documents.

Counsel for complainant offers in evidence certified transcript of all proceedings in the succession of James Railey from the time said succession was opened until the appointment of Chas. R.

539 Egelly as administrator, excepting only from this transcript the vouchers that are attached to the account of Dr. James G. Carson, testamentary executor thereof; filed and marked Exhibit "Y."

And neither party offering and being ready to examine any other witnesses nor having any other documents to offer in evidence this day, I adjourned the examination herein ordered, in the presence of all parties and in accordance with the notice given by complainant's counsel and served by me upon def'ts, until August 2nd, 1882, at the city of New Orleans, State of Louisiana.

(Signed) J. B. BEATTIE,
Special Examiner.

Ninth Day's Proceedings.

NEW ORLEANS, LA., *Aug. 2nd*, 1882.

Present: J. B. Beattie, special examiner; Mess. Mott & Saunders, solicitors for complainant; J. M. Kennedy, Esq., solicitor for def'ts.

J. M. Kennedy, Esq., solicitor for defendants, offered and had filed an exception or protest to the taking of testimony by Special Examiner J. B. Beattie outside or beycnd the limits of the parish of East Carroll, Louisiana.

Exception filed and marked Exhibit "Z."

540 JULIUS ARONI sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Mr. Aroni, are you a member of the bar at New Orleans?

A. I am.

Q. Were you counsel in the case of Wm. Gay against Oliver T. Morgan *et als.*, No. 6612 of the docket of the U. S. circuit — for Louisiana?

A. I was; in fact I was the counsel.

Q. What other counsel were associated with you in that case?

A. Originally the members of the firm who were then associated with me in the practice of law, Labatt and Clinton, neither of whom paid any attention to the case; I had charge of it, and after the dissolution of the firm of Labatt, Aroni & Clinton, which was some two (2) years prior to the trial of the case, neither of the other members of the firm had anything to do with the case; I associated Col. Kelly with me, and afterwards, for the purpose of obtaining testimony in Carroll parish, I associated with me Judge Wyly, as he resided in that parish.

Q. Was Col. Kelly a member of the firm of Kelly & Lazarus?

A. Yes, sir; I associated Col. Kelly with me before the firm of Kelly and Lazarus was formed; the Judge Wyly referred to
541 is the W. G. Wyly, a resident of East Carroll parish, La.

Q. Mr. Aroni, will you examine that breif, filed in the case above referred to and state who wrote it (handing witness a breif on facts in the Gay vs. Morgan case)?

A. Well, the breif handed to me is a review of the testimony obtained by Judge Wyly and is confined simply to the facts in the case. This statement of facts has been prepared by Judge Wyly. Other breifs on questions of law in the case were also prepared;

with those Judge Wyly had nothing to do. Judge Wyly stated these facts in court when the case was being argued before Judge Woods.

No cross-examination.

(Signed) JULIUS ARONI.

Counsel for complainant offered in evidence brief above referred to; filed and marked Exhibit No. 1.

SAMUEL FREIDLANDER sworn and examined on behalf of complainant.

Direct examination by Mr. SAUNDERS:

Q. Where do you reside and what is your business, Mr. Freidlander?

A. Reside in New Orleans, and am a commission merchant.

Q. Were you ever commission merchant of Judge W. G.
542 Wyly, of East Carroll parish, La.; if so, during what years were you his commission merchant?

A. I have been his commission merchant since 1868 and before.

Q. Has he shipped to you cotton made on the "Raleigh" plantation, East Carroll parish, La.?

A. He has shipped cotton raised on the "Raleigh" plantation at that time; besides, I have received cotton of his raised on other places.

Q. Can you tell me how many bales of cotton per year he shipped to you from the Raleigh plantation since 1868?

A. I am unable to say until my book-keeper makes out the statement; when he makes out the statement I am willing to swear to it.

Q. When will you produce that statement?

A. As soon as my book-keeper is able to make it out; I will then bring it here and sign it and annex it to my testimony.

No cross-examination.

(Signed) SAMUEL FREIDLANDER.

Counsel for complainant offered in evidence document marked Exhibit No. "2," as forming part of the testimony of Samuel Freidlander.

543 *Tenth Day's Proceedings.*

NEW ORLEANS, *August 4th*, 1882.

Judge HENRY L. LAZARUS sworn and examined on behalf of the complainant:

Direct examination by Mr. MOTT:

Q. Judge Lazarus, you reside in New Orleans?

A. Yes, sir.

Q. What is your profession, avocation, or business in life?

A. Lawyer by profession.

Q. Occupation?

A. At present I am one (1) of the district judges of the civil district court, parish of Orleans.

Q. Do you know the parties to this controversy, Mrs. Mary E. R. Boyd, complainant, W. G. Wyly and Chas. R. Egelly, defendants?

A. I only know W. G. Wyly.

Q. Do you know where he resides?

A. I beleive he resides in Lake Providence, in this State, or in the vicinity of Lake Providence.

Q. Were you ever of counsel or solicitor in the case of Wm. Gay against Oliver T. Morgan, executor of Oliver J. Morgan, in case No. 6612 of the docket of the U. S. circuit court, then called the district of Louisiana, now the eastern district of La.?

544 A. The firm of Kelly and Lazarus, of which I was a member, were associated with Mr. Aroni on behalf of the administration of Gay in the case mentioned.

Q. Were there breifs prepared for the court by counsel for plaintiffs in that case?

A. There were breifs prepared by Kelly and Lazarus and a breif upon the evidence prepared by Judge Wyly, def't in this case. He was associated with us in order to take the testimony in the country, with a view to a full presentation of the case to the court here in New Orleans.

Q. Did Judge Wyly take the testimony in the country?

A. It was taken under his direction, a large portion of it.

Q. Did he write and have printed a breif in that case?

A. There was one entirely written by Judge Wyly in that case, although the breif is signed by Kelly and Lazarus, Labatt, Aroni and Clinton. Judge Wyly's name appears last on that breif, Kelly & Lazarus second, and Labatt, Aroni and Clinton first.

Q. That breif was entirely written and signed by him?

A. Entirely written by him and signed by him, with our approval. This breif contained some fifty (50) odd pages.

Q. Was that breif a commentary upon the evidence in that case?

545 A. It was a review of the evidence and such comments made upon the evidence.

Q. If I produce that breif to you will you put your signature upon it to verify it?

A. Yes, sir; the other breifs in the case were simply upon the law.

Q. Do you recollect whether he referred in that breif to a man by the name of Micheal Gingery?

A. Yes, sir; and he made some elaborate comments upon his testimony.

Q. Will you append your signature to a copy of that breif?

A. Yes, sir; and append it to my signature.

No cross-examination.

(Signed) H'Y L. LAZARUS.

Complainant's evidence-in-cheif closed this day, August 4th, 1882.

Proceedings of August 10th, 1882.

LAKE PROVIDENCE, EAST CARROLL PARISH, LA.

Present: J. B. Beattie, special examiner; E. D. Saunders, Esq., solicitor for complainant; Judge W. G. Wyly, one — the def'ts, in person.

Judge W. G. Wyly, one of the defendants in this case, states that on the 6th of August, 1882, he sent a telegram to Mr. Saun-
546 ders, care of Mott, Kelly and Saunders, informing him that he could not begin to take testimony in his behalf until after the 15th of August, 1882, his counsel, J. M. Kennedy, Esq., being absent at Shreveport. He further states that he has served no written notice on counsel for complainant that he would take testimony to-day.

Mr. Saunders, counsel for complainant, states that he received from John T. Ludeling, Esq., counsel for defendants, written notice that he would take testimony on behalf of def'ts on this day.

NOTE.—Copy of notice served upon counsel for complainant by counsel for def'ts:

U. S. Circuit Court, Monroe.

M. E. R. BOYD
vs.
W. G. WYLY *et als.* } No. 1.

To Mess. Mott and Kelly:

You will please take notice that the defendants will commence to take the testimony of witnesses in their behalf on Thursday, 10th day of August, 1882, at Lake Providence, E. Carroll parish, La., in accordance with the order of the court made in said case.

(Signed) JOHN T. LUDELING,
Solicitor for Def'ts.

July 1st, 1882.

Endorsed: Mary E. R. Boyd *vs.* W. G. Wyly *et als.* Notice.

547 *Certificate.*

I, J. B. Beattie, special examiner, duly appointed by the circuit court of the United States for the fifth circuit, western district of Louisiana, by virtue of the annexed commission issued out of said court to me to take the depositions in this cause, do hereby certify that on the several days named in the depositions hereto annexed I was attended, at the town of Lake Providence, East Carroll parish, State of Louisiana, and at the city of New Orleans, parish of Orleans, State of Louisiana, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined and their depositions reduced to writing, and by agreement of counsel, hereto annexed, the signatures of the said witnesses to their depositions

were waived. I further certify that the Exhibits, "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," and Nos. "A 1" and "B 2" were introduced in evidence; also accompanying notices given and orders made during the taking of said depositions, and there being no further witnesses to be examined for either side before me as special examiner I close the same.

(Signed) J. B. BEATTIE,
Special Examiner.

Sept. 23rd, 1882.

548 EXHIBIT "A."—Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendants July 18th, 1882. Filed July 18th, 1882.

(Endorsed:) Succession of James Railey, dec'd. Copy of the papers on file in the matter of the administration of C. R. Egelly.

Petition of Creditors.

To the hon. the judge of the parish court in & for the parish of Carroll, State of Louisiana, *ex officio* judge of the court of probate:

The petition of Thos. H. Hunt, of John F. Irvine, Hickey Morgan, commissioners of liquidation for the Bank of Louisiana; of I. S. & R. E. Neal, of Edward Sparrow and J. W. Montgomery, all of whom appear herein as creditors of the succession of James Railey, dec'd, represents that heretofore, to wit, on the — day of ——, 1866, one F. W. Boyd was appointed by the district court of said parish to represent said succession in the capacity of dative testamentary executor; that he qualified, gave bond, and has administered on said estate in part only; that he leased out the plantation, without any order of court, for one year and cultivated it himself during the year 1867; that he has never filed any account of his admin-
549 istration, but, on the contrary, has appropriated or used the rents and revenues of said estate for his individual benefit without paying any of the creditors any portion of their just dues; that for the year 1866 he received for the lease of said plantation, as petitioners are informed & believe, a large sum of money, none of which he has accounted for; that he has abandoned his said administration and has no domicil or residence in this State, and is, as petitioners are informed, permanently absent therefrom; that he has never given any good and sufficient bond for the faithfulness of his administration, the security on his bond being utterly and entirely insolvent, and that he has no property in this parish, nor, as they believe, in this State; that he has never left any power of attorney authorizing any one to represent him in the management of said estate, as they verily believe.

Wherefore petitioners pray that the office of said Boyd and the administration of said estate may be declared to be vacated and unrepresented; that said Boyd be decreed to have abandoned his trust, and that in order to protect the interest of creditors an administrator

may be appointed to finish the said administration of said estate only partly administered by James G. Carson, testamentary executor, now deceased, & by said Boyd; that for this purpose Charles R. Egelly, of said parish, may be appointed to represent said estate in said
550 capacity, the said Charles R. Egelly appearing herein by counsel and joining in the prayer of this petition. They further pray that a commission may issue to any notary public or other competent officer in the parish authorizing him to make an inventory of the effects of said succession, & for general relief in the premises.

(Sig'd) SPARROW AND MONTGOMERY,
Att'ys for Pet'rs.

Affidavit.

J. W. Montgomery, one of the counsel in this matter, being sworn, deposes and says that all the facts in the foregoing petition are true and correct to the best of his knowledge and belief.

(Sig'd) J. W. MONTGOMERY.

Sworn to and subscribed before me this 16th day of July, 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

Order.

STATE OF LOUISIANA, *Parish of Carroll:*

Probate Court.

By reason of the law being in favor of the petitioners, and due proof having been administered to the truth of their allega-
551 tions, it is ordered, adjudged, and decreed that the prayer of the petition be granted.

That said Boyd, having abandoned his said administration, showing no residence or domicil in this State, his said office be held to be vacant and said estate to be unrepresented; that due notice be given of the application of said Egelly, and if no opposition be made thereto within ten days, as required by law, he be appointed and qualified as administrator for said succession, on giving bond as required by law.

Thus done this 16th of July, 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

Endorsed: Filed July 16th, 1868. (Sig'd) Geo. C. Benham, P. judge.

Petition.

Opposition of F. W. Boyd.

To the Hon. Geo. C. Benham, parish judge in and for the parish of Carroll, State of Louisiana:

The petition of Frederick W. Boyd, a resident of the State of Mississippi, with respect shows that he is the duly appointed executor of the last will and testament of Jas. Railey, late resident of your

said parish and State; that he has duly administered the property of the succession of the said Railey since his appointment and confirmation as executor under the will.

552 Petitioner further shows that an application has been made to your honorable court praying that E. R. Egelly, Esq., be appointed dative testamentary executor of the said succession notwithstanding your petitioner is acting as executor of the same.

Wherefore your petitioner prays that the said application be rejected, and that the said applicant pay all costs of this proceeding, and for all general relief.

(Sig'd) GOODRICH, PILCHER AND MONTGOMERY, *Att'ys.*

Inventory.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that in pursuance of an order and decree of the parish judge in and for the parish of Carroll, State of Louisiana, dated. 16th day of July, A. D. 1868, authorizing and requiring me to take an inventory and cause an appraisement to be made of all the property belonging to the succession of the late James Railey, deceased—

I, Thomas D. McCandless, recorder in and for the parish of Carroll, State of Louisiana, duly commissioned and qualified,

553 proceeded to take said inventory and cause said appraisement to be made by appointing John W. Hays and Michael Gingery, both residents of said parish and State, appraisers, to whom I administered the following oath, to wit:

We do each of us solemnly swear that we will well and truly appraise and the true cash value place upon all the property belonging to the succession of the late James Railey, deceased, which may be submitted to us for our decision, to the best of our ability and understanding, so help us God.

(Sig'd) JNO. W. HAYS.
(Sig'd) MICHAEL GINGERY.

Sworn to & subscribed before me this — day of Sept., A. D. 1868.
F. D. McCANDLESS, *Recorder.*

Having thus sworn said appraisers, we proceeded, in presence of the undersigned witnesses, to make the following inventory and appraisement:

ITEM.—*Land.*

All and singular that tract of land or plantation known as the "Front Railey" or "Raleigh" plantation, situated, lying, and being in the parish of Carroll, State of Louisiana, and in township No. nineteen north of range thirteen (13) east, and bounded as follows, to wit:

554 In front by the Mississippi river; in the rear by lands of J. B. Beard; on the left or above by the lands now belonging.

to Dr. T. W. Lilly, known as Salem plantation; and below by the succession of Johnathan Morgan, and more particularly described in the deeds of sale to said James Railey as follows, to wit: Lots 33, 34, and N. ½ of section 35 and S. ½ of sec. 35 and so much of lot 36 as will include the quantity of 600 acres; also the E. ½ of N. E. ½ of sec. 55; also that tract of land bought by James Railey from Mrs. E. Savage, containing 219 acres, being part of her plantation previously, and bounded on the lower or east side by the lane which separated the lands of the said Railey and Savage; the first half of said 219 acres embraced in a uniform strip of the same width, running the full depth of Mrs. Savage's tract commencing at the bank of the Mississippi river, running due south parallel with the lane aforesaid to land occupied by J. B. Beard; the second remaining half of said 219 acres being embraced by a continuation of the front line up the river bank to a point terminating at the extremity of a piece of woodland which then divided the said Mrs. Savage's "front field" from the back, and thence due east to the intersection of the north and south line of the first aforesaid half of said 219 acres.

555 Also that tract of land bought by James Railey from J. H. D. Bowmar, commencing at the bank of the Mississippi river, on the line between the lands then owned by the said Bowmar and Railey, at the place called "the Pecan Grove plantation;" thence running due south to the southeast corner of said Railey's said land; thence running east so far that by running a line due north and parallel with the line first above described to the bank of the Miss. river as will embrace and include 150 acres; and also the balance of the said Bowmar's land and Pecan Grove plantation, bounded on the east by the lands of the est. of Johnathan Morgan, on the south by the lands of J. B. Beard and Wm. Henderson, and on the west by what was previously known as James Railey's "Raleigh plantation."

And all said different tracks together now composing the said Raleigh plantation and containing the quantity of sixteen hundred and eighty-eight $\frac{10}{100}$ (1,688.70) acres, more or less, aforesaid, at one $\frac{50}{100}$ dollars per acre, amounting to the sum of $2,533.05, twenty-five hundred and thirty-three $\frac{05}{100}$ dollars.

Thus done, inventoried, and appraised at one sitting and without turning aside to other matters, at my office, in the town of Floyd, in said parish and State, in presence of Reuben S. A. McIntyre
556 and Isaac P. Mathis, lawful witnesses, who hereto sign their names with said appraisers and me, recorder, on this the 4th day of September, A. D. 1868.

(Sig'd) JOHN W. HAYS.
(Sig'd) MICHAEL GINGERY.

Attest: R. S. A. McINTYRE.
J. P. MATHIS.

T. D. McCANDLESS, *Recorder.*

Endorsed: "Filed Sept. 17th, 1868. Geo. C. Benham, parish judge."

Bond of Administrator.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

Know all men by these presents that we, Charles R. Egelly, as principal, and J. W. Montgomery, as security, are held & bound unto the Honorable George C. Benham, judge of said court and parish, in the sum of three thousand two hundred dollars; to the payment whereof we hereby bind ourselves this 16th day of September, 1868.

The condition of this bond is such that whereas the above-bounden Egelly was, on the 16th day of July, 1868, duly appointed administrator of the estate of James Railey, dec'd, and if he
557 shall well and truly do and perform all the duties incumbent on him as such, then this obligation to be null and void; otherwise to be in full force.

(Sig'd) CHAS. R. EGELLY.
(Sig'd) J. W. MONTGOMERY.

Attest: GEO. C. BENHAM, *P. Judge.*

Endorsed: "Filed Sept. 16th, 1868. (Sig'd) Geo. C. Benham, parish judge."

Oath of Administrator.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

I, Charles R. Egelly, do solemnly swear that I will discharge and perform faithfully all the duties incumbent on me as administrator of the succession of James Railey, dec'd, to the best of my ability and understanding, so help me God.

(Sig'd) CHARLES R. EGELLY.

Sworn to and subscribed before me this 18th day of September, A. D. 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

558 *Letters to Administrator.*

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

Be it known that Charles R. Egelly, having been appointed, after due notices, administrator of the estate of James Railey, dec'd, and having taken the oath and given bond as required by law he is hereby authorized to perform the duties of said office, and full faith is due his acts as such.

Witness the Hon. George C. Benham, judge of said court, this 16th day of September, 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

Oath and letters endorsed: Filed Sept. 16th, 1868. Geo. C. Benham, P. judge.

Petition and Order for Sale of Property.

Petition of adm'r.

To the hon. the judge of the parish court in and for the parish of Carroll, Louisiana:

The petition of Charles R. Egelly, of your said parish, represents—

That your petitioner has been appointed administrator of the succession of James Railey, dec'd, by virtue of an order & decree of your hon. court granted on the 16th day of July, 1868.

559 That by virtue of an order granted by said court an inventory and appraisement of the property of said succession has been duly made and is now on file in your said office.

Petitioner shows that on examination of the condition of said estate and of its liabilities he finds the following-mentioned claims now in judgment in the district court of said parish, to wit:

A judgment on mortgage in favor of August Belmont, with 8 % interest from Feb'y 22, 1860, for this sum	$15,000 00
A judgment in favor of A. & M. Heine, with 8 % int. from Feb'y 9, 1861, for this sum	$4,500 00
A judgment in favor of E. Cower & Co., with 5 % int. from Aug. 3, '60, for this amount	$800 00
A judgment in favor of J. S. & R. E. Neal for this amount and 8 % int. from —	$2,716 00
A judgment in favor of the Citizens' Bank of La., with 8 % int. from June 3, '61, for this	$1,500 00
A judgment in favor of the Bank of La. for this amount and 8 % int.	$4,500
A judgment in favor of the estate of James G. Carson, due on a homologated account, for this sum	$10,000 00
A judgment on an account homologated in favor of Mess. Sparrow and Montgomery, att'ys	$6,000 00

Which claims & judgments are now due and amount to the sum of forty-six thousand dollars; that he has not in hand any

560 means wherewith to settle up said indebtedness or any portion thereof; that in order to settle up the same a sale of the property of said estate is necessary.

Wherefore petitioner prays that an order may be rendered by your hon. court decreeing the sale of all the property mentioned in the inventory aforesaid for the purpose of paying the debts of said succession.

That your petitioner, as administrator, be authorized to make said sale according to law, and for general relief in the premises.

(Sig'd) CHAS. R. EGELLY, *Adm'r.*

Petition of the Citizens' Bank, Intervenor.

To the hon. the judge of the parish court in and for the parish of Carroll:

The Citizens' Bank of Louisiana, a judgment creditor of the estate of James Railey, dec'd, as set out above, appears and prays for leave to intervene in the foregoing proceedings of the administration of said estate and joins in the prayer of the petition for a sale of the property of said estate in order to pay the judgment held by your petitioner, and for general relief, &c.

(Sig'd) SPARROW AND MONTGOMERY, *Att'ys.*

561 *Order.*

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

The foregoing petitions of the administrator of the estate of James Railey, dec'd, and of the intervener, The Citizens' Bank, being considered—

It is ordered and decreed that prayer of said petitioners be granted; that a sale of the property mentioned in the inventory taken by Thos. D. McCandless on the — day of September, 1868, and now on file, be sold in block, for the purpose of paying the debts of said succession; that said administrator be authorized to make said sale for cash, and that afterwards he shall file in said court a tableau of distribution among the creditors of said estate of the funds to be realized at and by said sale.

Thus done this 17th day of September, A. D. 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

(Endorsed:) Filed Sept. 17th, 1868. (Sig.) Geo. C. Benham, p. judge.

562 *Order and Writ of Sale and Return Thereon.*

STATE OF LOUISIANA, *Parish of Carroll:*

Order.

PARISH JUDGE'S OFFICE.

To Charles R. Egelly, administrator of the succession of James Railey, dec'd:

You are hereby authorized & required to make a sale at public auction for cash of the "Raleigh plantation," the property of said succession, and particularly described in the inventory on file; said sale to be made in all respects according to law and the property to be sold in block.

And how you shall execute this writ or commission make due return to my office.

Witness my official signature this 17th day of September, 1868.

(Sig'd) GEO. C. BENHAM,
Parish Judge.

Writ of Sale.

STATE OF LOUISIANA, *Parish of Carroll:*

Probate Court.

The State of Louisiana & said court to Charles R. Egelly, administrator in the estate of James Railey, dec'd, Greeting:

You are hereby authorized and required to sell according to law the following-described property belonging to said succession,
563 to wit: That property situated in our said parish known and designated as the "Raleigh plantation," bounded in front by the Mississippi river, in the rear by the lands of J. B. Beard, on the left or above by the lands now belonging to Dr. W. T. Sibley's "Salem plantation," and on the lower side by the lands of Johnathan Morgan's succession, and situated about sixteen miles below the town of Providence, and containing about sixteen hundred acres, more or less. Terms of sale, cash.

And of how you shall have executed this writ due return make to this office as the law directs.

Witness the Hon. Geo. C. Benham, judge of said court, and the seal of said court, this the 18th day of Sept., 1868.

(Sig'd) J. L. CHEATHAM, *Clerk.*
By R. J. LONDON, *D'y Cl'k.*

Return.

Received the within writs of sale on the 18th day of September, 1868, and by virtue thereof and of the judgment of the parish court rendered on the — day of Sept., 1868, I, Chas. R. Egelly, adm'r of the estate of James Railey, dec'd, did advertise the within-described property to be sold on the 20th day of Oct., 1868, at the door of the court-house in this parish, which advertisement was published in the "Elton Eagle," the official newspaper of the parish, for more than thirty clear days previous to the day of sale, and on the day of sale, to wit, the 20th day of Oct., 1868, I proceeded to
564 the place of sale, and at the hour of 12 "m." I read the judgment writ and advertisement aforesaid and offered said property to the highest bidder for cash; whereupon William G. Wyly bid the appraised value thereof, and, he being the last and highest bidder, I struck off and adjudicated said land and plantation to him at and for the price and sum of $1.50 per acre, being the appraised value aforesaid, and his bid, amounting to $2,533.05, having been paid up at the time of sale.

I return this writ accordingly this the 20th day of October, 1868.

(Sig'd) CHAS. R. EGELLY,
Adm'r Estate James Railey.

(Endorsed:) Filed April 17th, 1869. (Sig.) C. A. De France, parish judge.

Application for Monition, &c.

To the hon. the judge of the parish court in and for the parish of of Carroll:

The petition of Wm. G. Wyly, residing in said parish and State, with respect shows—

That on the 20th October, 1868, he became the purchaser of a plantation situated on the Miss. river, in this parish, known as the "Raleigh plantation," sold at the succession sale of James
565 Railey, dec'd. Said plantation is situated about sixteen miles below Lake Providence, in this parish, and bounded on the front by the Mississippi river; in the rear by the lands of J. B. Beard; on the left or above by lands of T. W. Lilly, or "Salem Plantation," and on the lower side by lands of the succession of Johnathan Morgan, dec'd, containing about 1,600 acres, more or less. Petitioner shows at the offering as aforesaid he became the purchaser of said plantation for the price and sum of twenty-five hundred and thirty-three $\frac{1}{100}$ dollars cash, paid upon the spot to the legal representative of said succession; and thereupon Charles R. Egelly, administrator of said succession, made petitioner a deed of sale to said plantation by authentic or public act and in every respect according to law.

Petitioner shows that he is an innocent third purchaser and adjudicatee of this property and has paid up in cash the amount of his bid and has the title as aforesaid.

But for the purpose — quieting his title he is anxious to sue out a monition to confirm his title. Petitioner shows that the writ of sale issued from this hon. court under and by virtue of which his said plantation was sold, and he is anxious to have a writ of monition to issue from this honorable court, and, after legal delays, to have his said title quieted by a decree of homologation.

566 Wherefore petitioner prays that a writ of monition issue according so law, and, after legal delays and legal advertisements, that his title in and to said plantation be confirmed and homologated and he be quieted in his possession.

Prays for general relief.

(Signed) W. G. WYLY,
In Propria Persona.

Order.

STATE OF LOUISIANA, *Parish of Carroll:*

Having carefully considered the foregoing petition and by reason of the law being in favor of petitioner, it is ordered that a writ of monition do issue, and, after legal delays, if no opposition is made, that his title be homologated.

Let petitioner's prayer be granted according to law.

Read & signed at chambers, in parish and State aforesaid, this 31st day of October, A. D. 1868.

(Signed) GEO. C. BENHAM,
Parish Judge.

(Endorsed:) "Filed Oct. 31st, 1868. (Signed) R. I. London, d'y cl'k."

567 *Writ of Monition.*

Parish Court in and for the Parish of Carroll.

In the Matter of the Succession of JAMES RAILEY, Dec'd.

Whereas Wm. G. Wyly has this day filed in this office his petition praying for the homologation of his title, and that a monition may issue calling on all persons to show cause (if any they can), within thirty days after legal advertisement, why said monition should not be approved and homologated by our said court and — be quieted in his title to the following property, to wit, a certain plantation known as the "Raleigh plantation," situated in this parish, about 16 miles below the town of Lake Providence, and bounded in front by the Miss. river, in the rear by the lands of J. B. Beard, on the left or above by the lands of T. W. Lilly, or "Salem plantation," and on the lower side by the lands of the succession of Jonathan Morgan, dec'd, containing about 1,600 acres, more or less, with all the improvements thereon, being the same property purchased by him at succession sale of the succession of James Railey, dec'd, on 20th Oct., 1868, for the price and sum of twenty-five hundred and thirty-three $\frac{5}{100}$ dollars cash paid upon the spot; said Wyly, being the highest and last bidder, became the purchaser of said property, and the same was adjudicated to him for the price aforesaid:

568 Now, therefore, I, John L. Cheatham, clerk of the thirteenth district court of parish of Carroll and *ex officio* clerk of the parish court, do grant this monition in the name of the State of Louisiana, calling upon all persons who can set up any title and right to said property in consequence of informalities in the orders, decrees, or judgments of the court under which said sale was made, or any irregularities or illegalities in the seizure, appraisements, time and manner of sale, the advertisement, or from any other defect whatever, to show cause, within thirty days from the day of the judicial publication of this monition, why the sale so made should not be confirmed and homologated and W. G. Wyly quieted in his possession and title to said property.

Witness the Honorable George C. Benham, judge of the parish court in & for the parish of Carroll, Louisiana, and the seal of our said court this 31st Oct,, 1868.

[SEAL.] (Sig.) J. L. CHEATHAM, *Clerk.*

Note of Evidence.

W. G. WYLY *vs.* JAMES RAILEY EST.

Pl'ff offers in evidence the writ of sale, the process verbal of the sheriff's return thereon, the petition of Chas. R. Egelly for administration, and the inventory made on the 4th of September,

569 A. D. 1868, and all the mortuary papers in the succes-

sion; also offers the advertisement in the "Elton Eagle," extending from the 14th of November, 1868, to 1st January, 1869.

I hereby certify that the foregoing is all the evidence offered in the trial of the above-styled suit.

Given under my hand officially this the 4th day of January, A. D. 1869.

(Sig'd) R. K. ANDERSON, *Clerk*,
By R. J. LONDON, *D'y Clerk.*

(Endorsed:) Filed Jan'y 4th, 1869. R. J. London, d'y clerk.

Judgment.

By reason of the law and the evidence being in favor of pl'ff and against the def'ts, and by further reason of the within monition being duly granted and duly advertised in the "Elton Eagle," the official journal of the parish of Carroll, La., for more than thirty days, and no opposition being made thereto, and on due proof being made in open court of the allegations of plaintiff, it is hereby ordered that plaintiff, W. G. Wyly, do have judgment of homologation and his title to the lands bought at the succession sale of James Railey be confirmed & homologated and that he be quieted in his title & possession to the following-described property, to wit: A plantation, known as the "Raleigh plantation," situated in this parish on the Miss. river, purchased by him at the succession sale of James R. Railey, dec'd, situated about 16 miles below Lake Providence, "bounded on the front by the Miss. river, on the rear by the lands of J. B. Beard, on the left or above by the lands of T. W. Lilly or 'Salem plantation,' and on the lower side by the lands of the succession of Jonathan Morgan, dec'd, containing about 1,600 acres, more or less."

570

It is ordered that the sale so made be confirmed & homologated.

Read and signed in open court this 5th January, 1869.

(Sig'd) C. A. DE FRANCE,
Parish Judge.

(Endorsed:) Filed Jan'y 5th, 1869. R. J. London, d'y clerk.

Final Account of C. R. Egelly, Administrator, and Judgment Homologating Same.

Account.

Estate of James Railey in ac. with Chas. R. Egelly, Dr.

1868.

To this amount, paid Jno. L. Cheatham, clerk of court, as per voucher 1 ---------- $50 00

To this amount, paid R. J. London, clerk, for costs of the proceeding, &c., as per voucher No. 2 ---------- 31 65

571 To this am't, paid Sparrow & Montgomery, attorneys, on the judg't in their favor rendered on an ac. & tableau of distribution filed by the representatives of the deceased ex'r for est. of Railey and fees in this behalf incurred, as per voucher No. 3 ---------- 2,351 15

To am't of commissions due & payable to accountant, at 2½ on the am't of the inventory on file	63 25
To am't paid "Carroll Record" newspaper for advertisements, as per voucher No. 4	15 00
To am't paid to the "Elton Eagle" for advertisements, as per voucher No. 5	12 00
To am't reserved to pay for costs of this proceeding	10 00
	$2,533 05

Est. of James Railey in ac. with Chas. R. Egelly, Cr.

By this am't rec'd on the sale of the Raleigh plantation, made under judg't of the parish court on the 20th day of October, 1868 ---------- $2,533 05

To the hon. the judge of the parish court of the parish of Carroll' State of Louisiana:

The petition of Chas. R. Egelly, adm'r of the est. of James Railey, dec'd, represents—

That the foregoing is a true & just account of his acts of administration of said estate; that the property of said estate having been duly sold under an order from your hon. court the proceeds
572 arrising therefrom amounted to the sum of twenty-five hundred & thirty-three $\frac{35}{100}$ dollars, which money has been disbursed by him in the payment of the privileged claims and those incurred as expenses of administration, as per the debits of this account and vouchers annexed. Petitioner shows that said estate has been fully administered.

Wherefore he prays that the items of said account and the payments aforesaid may be recognized as valid and approved and homologated, and that your petitioner may be discharged from further administration, and that his official bond may be cancelled, and for general relief, &c.

(Sig'd) SPARROW & MONTGOMERY, *Att'ys.*

(Endorsed:) "Filed April 17th, 1869. C. A. De France, parish judge."

Judgment.

Parish Court, Parish of Carroll, La.

Succession of JAMES RAILEY, Dec'd.

Judgment of homologation, &c.

It appearing in this case that due & legal advertisement having been made of the final ac. of the adm'r and petition for discharge, and the time having expired without opposition being filed, and the account being supported by proper vouchers, and the payments and disbursements having been properly and legally made, it is therefore ordered, adjudged, and decreed that there be judgment
573 in favor of said adm'r, Chas. R. Egelly; that said payments and disbursements be recognized as valid and proper and

the said account be homologated and confirmed and the said administrator be discharged from further administration and his official bond be cancelled and annulled.

This done, read, and signed this 10th day of May, 1869, in open court.

(Sig'd) C. A. DE FRANCE,
Parish Judge.

Judgment.

In this case it appearing that due notice of the petition and account was duly made, and the time having expired without opposition, and it being duly proved that said account is correct and properly supported by vouchers, it is therefore ordered, adjudged, and decreed that said account be homologated, allowed, & confirmed & that there be judgment in accordance with the prayer of the petition, & that said adm'r be discharged and his bond be cancelled.

Read and signed in open court this 7th day of July, 1869.

(Sig'd) C. A. DE FRANCE,
Parish Judge.

574 STATE OF LOUISIANA, *Parish of East Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the foregoing twenty-three (23) pages contain a true and correct copy of all the original papers on file in this office in the matter of the administration of Chas. R. Egelly of the succession of James Railey, deceased.

Given under my hand and the seal of said court this the 18th day of March, A. D. 1882.

(Sig.) F. H. G. TAYLOR,
Deputy Clerk.

EXHIBIT "B." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendants July 19th, 1882. Filed July 19th, 1882. Succession of James Railey.

Certified Copy of Application of William Craig and James C. Erwin, Creditors, Praying for Rule, &c., upon Executor.

Succession of JAMES RAILEY.

To the hon. the judge of the 13th judicial district of the State of Louisiana, in and for the parish of East Carroll:

575 William Craig and James C. Erwin, who reside in this parish, respectfully show that they are creditors of the succession of James Railey, deceased. Said succession owes William Craig nine thousand three hundred and forty-six $\frac{63}{100}$ dollars, with eight per cent. per annum interest from the first day of January, A. D. 1860, until paid, subject to a credit of ten hundred and eighty dollars paid on the 26th day of January, A. D. 1861, and in the further sum of one thousand dollars, with eight per cent. per annum interest from the first day of January, A. D. 1863, until paid; that

said succession owes James C. Erwin one thousand dollars, with eight per cent. per annum interest from the first day of January, A. D. 1863, until paid; shows that said succession has been opened in this parish, and that Frederick W. Boyd is dative testamentary executor of the same; that their said claims have been presented to said executor and have been accepted and acknowledged as just claims against said succession.

Wherefore they pray that a rule be granted them against said executor ordering him to file an account showing the amount of funds of said succession now on hand within the legal delays; that upon his failure to answer said rule or in the event of his not exhibiting in his hands funds sufficient to pay said claims *that* the rule be made absolute, and that an order of sale issue to the sheriff of
576 this parish to sell in accordance with law a sufficient amount of the property of said succession of James Railey, deceased, as appears on the inventory of the same, to pay said claims, interest, and costs.

They further pray that the said executor, Frederick W. Boyd, be served with a notice hereof, and for all other orders or notices necessary in the premises.

(Sig'd) DUNCAN AND NEWMAN,
Att'ys for Petitioners.

Order.

Upon considering the foregoing application, it is ordered that Frederick W. Boyd, dative executor of the succession of the late James Railey, deceased, do file an account of his acts and doings as executor aforesaid within ten days from the service hereof and according to law.

Parish of Carroll, La., M'ch 23rd, 1867.

(Sig'd) J. L. CHEATHAM,
Clerk District Court.

(Endorsed:) Filed March 18th, 1867. Rob't J. London, d'y clerk.

577 *Citation and Return.*

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

CRAIG and ERWIN
vs.
SUCCESSION OF JAMES RAILEY. } No. 5367.

The State of Louisiana and said court to Frederick W. Boyd, executor, residing in said parish and State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said William Craig and James C. Erwin, a duly certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of said court held at Floyd, in said parish, within fourteen days after service hereof, and according to law.

Witness the Honorable Edgar D. Farrar, judge of said court, & the seal of said court this the 23rd day of M'ch, in the year of our Lord 1867.

[SEAL.] (Sig'd) J. L. CHEATHAM, *Clerk*,
P'r ROB'T J. LONDON, *D'y Cl'k.*

"Delivered" M'ch 23, '67.

Sheriff's Return.

Received, Floyd, Carroll parish, Louisiana, M'ch 23d, A. D. 1867, the within citation, together with a certified copy hereof and a certified copy of plaintiffs' petition, and on the 27th day of the same month & year served said copies by handing the same to
578 Frederick W. Boyd., Jr., a free white person above the age of 14 years, at and residing at the residence of the within-named Frederick W. Boyd, executor, in said parish & State, he being absent from home at the time of service hereof, as ascertained by interrogating the said F. W. Boyd, Jr.

(Sig'd) W. W. COLLINS, *Sheriff*,
By C. A. HEDERICK, *D'y Sheriff.*

(Endorsed:) Returned and filed April 11, 1867. Rob't J. London, d'y cl'k.

STATE OF LOUISIANA, *Parish of East Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the within and foregoing is a true and correct copy of the originals on file in this office.

Witness my hand and the seal of said office this 10th day of March, A. D. 1882.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
Dep'ty Clerk.

EXHIBIT "C." Referred to and made part of the foregoing testimony. Offered in evidence by complainant before special examiner July 20th, 1882. Filed July 20th, 1882.

FLOYD, LA., *Sept. 14th*, 1865.

Rev. F. W. Boyd, Vicksburg, Miss.

579 DEAR SIR: I did not receive your note of the 10th August until a few days ago, owing principally to my own absence from home.

I do not think you will meet with any serious difficulty in going bond for your administration upon the estate of Railey, for, under present aspects, the property will be appraised at a low rate, and your bond, being for only one-fourth over and above such appraisement, it will not be for a very large amount.

You state that you can procure securities on the bond in the city of New Orleans, which is perfectly legitimate, & I would recommend your doing so, inasmuch as it will fecilitate the procuring of additional names resident in the parish in case the clerk of court

should not be satisfied as to the solvency of such securities. It is very possible, owing to his limited acquaintance in the city, that such objection may be made by him; consequently he would, in the absence of information on their solvency, require resident security.

As a term of our court is now approaching, 2nd Monday — October, it will be impossible for me to meet you at Mr. Newman's previous to that time, and I presume that before I could appoint a day for an interview there we may meet here, for it will be necessary for you to qualify before the clerk of court & tender your bond previous to taking possession of the Railey succession.

Very respectfully, your ob't s'v't,

(Sig'd) J. W. MONTGOMERY.

580 EXHIBIT "D." Referred to and made part of the foregoing testimony. Offered in evidence by complainant before special examiner July 20th, 1882. Filed July 20th, 1882.

FLOYD, *July 27th*, 1865.

Mrs. Mary E. Boyd, Natchez, Miss.

MADAM: In association with Gen. E. Sparrow I have been heretofore representing (as attorney) the executor of your late father's will. You have, of course, been informed of the death of Dr. James G. Carson, who was executor, and who, up to the invasion of this country, had possession of the succession in this parish. When the Federal army came into the parish, or rather were about to do so, he applied to us for a legal opinion as to his duty respecting the property. We recommended the course which he afterwards adopted, along with nearly all the planters of the country, which was to remove all the slaves beyond the probable reach of the invading troops. He removed them to Texas, where they are at this time. They have not been able at any time there to pay or earn more than expenses; this was in a great measure the result of the
581 condition of the country, and was a misfortune which was shared by nearly all our refugees.

The negroes are still under the control of the overseers, Mr. Craig and Irvin. A crop of corn has been made, and which may perhaps be disposed of for funds sufficient to defray expenses in removing the negroes and the personal effects back to the plantation. The negroes are anxious to return, and I take occasion to urge upon the heirs of the estate to permit them to do so, and to assist them also in their wishes.

They will all, or most of them, enter into the service of the estate, and thus, during the next year, make the two plantations productive, to some extent at any rate. If the heirs and your mother will authorize the overseers they will, I presume, sell out the crops this fall and remove everything to Carroll, but the written consent of the parties interested must be given to enable them to do so. In order to hire the services of the negroes next year upon the two plantations up here it will be necessary that another executor should be appointed, some person residing in the State, & who will be able to give good and sufficient security for the performance of his duties.

The proper person for that place must be determined upon by the heirs of the estate—that is to say, that there will be no difficulty in procuring the appointment of the person indicated by them,
582 provided he have the qualifications required by law. In the meantime the negroes and personal effects will remain in the hands of the two overseers. It would be well not to postpone action in this matter beyond the fall, and perhaps the sooner the executor is qualified the better.

It has been suggested that you were the proper one for me to correspond with on this subject, and I should be pleased to know the wishes of the family respecting the matters alluded to.

My address is to "care of George R. Newman, Carroll parish, La., via Vicksburg." There are no postal arrangements in the parish as yet.

I am, very truly your ob't s'v't,
(Sig'd) J. W. MONTGOMERY.

EXHIBIT "E." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendants July, 1882.

(Endorsed:) J. W. Montgomery to (conveyance) J. H. D. Bowman. October, 1869.

Be it known and remembered that before me, Lazarus Lindsey, a commissioner of the State of Louisiana in and for the State
583 of Mississippi, residing in the city of Vicksburg, and duly commissioned and qualified—

Personally came and appeared Edward Sparrow, herein acting as the agent and attorney-in-fact for John W. Montgomery, of Carroll parish, Louisiana, who declared and said that for and in consideration of the sum of two thousand and ten dollars to him, the said agent, cash in hand paid by J. H. D. Bowmar, of the said city of Vicksburg, the receipt of which is hereby acknowledged, he, the said agent, in behalf of said Montgomery and by virtue of the power of attorney hereto annexed and made a part of this act, does hereby sell and convey to the said Bowmar all the right, title, and interest of said Montgomery in and to one undivided half of the plantation in Carroll parish he acquired at a sale made by the sheriff of said parish on the 2nd day of October, 1869, as per deed executed by said sheriff on the 11th day of October, 1869, said plantation containing in all about three thousand acres, more or less, and composed of the following lots and parcels of land, to wit: The N. W. $\frac{1}{4}$ of the E. $\frac{1}{2}$ of the E. $\frac{1}{2}$ and the S. W. $\frac{1}{4}$ of sec. 52, all of section 53, T. 19, R. 13 E, and the E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of section 25, T. 19, R. 12 E., containing 1,160 acres, more or less; also two tracts or parcels of land designated and known as a
584 part of section 54, containing 524 acres, more or less; also the E. $\frac{1}{2}$ and the E. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of section 35, T. 19, R. 12 E., containing 400 acres; also the N. $\frac{1}{2}$ of sec. 36, T. 19, R. 12 E., containing 319.84 acres; also a portion of the N. W. $\frac{1}{4}$ of sec. 54, containing 120 acres, in T. 19, R. 13 E.; also W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of sec.

25, T. 19, R. 12 E.; also E. ½ of S. E. ¼ of sec. 25, T. 19, R. 13 E., containing 160.16 acres; said appearer also declares that this sale is made without warranty of title or return of price in case of eviction, the purpose hereof being to convey only the right in said property acquired by said sheriff's sale; and the said Bowmar being present, accepts this sale with all its clauses and conditions, and declares that he dispenses with exhibition of the certificate of the recorder of mortgages as required by the law.

This done and passed at my office, in the city of Vicksburg, this 14th day of October, 1869, in presence of E. D. Farrer and F. F. Montgomery, competent witnesses, who with the parties have signed this act in my presence.

In witness whereof I have attached my seal and signature at the same time. The word "warranty" inserted before signing.

(Sig'd) J. W. MONTGOMERY,
By his agent, EDWARD SPARROW.
(Sig'd) J. H. D. BOWMAR.
Attest: E. D. FARRER.
F. F. MONTGOMERY.

LAZ. LINDSEY,
Commissioner.

585 STATE OF LOUISIANA, *Parish of E. Carroll:*

I certify the above to be a true copy of the original record in this office in Notarial Book "N," folios 281 & 282.

Witness my hand and seal on this the 17th July, A. D. 1882.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

EXHIBIT "F." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Deed. H. G. Blackman, administrator, to Louis G. Balfour.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that on this 2nd day of February, A. D. 1869, before me, Donelson C. Jenkins, a notary public in and for said parish of Carroll, personally came and appeared Horace G. Blackman, executor of the last will and testament of the late William G. Balfour, dec'd, who declared and said unto me, notary, that by virtue of an order and decree of the parish court for the said parish of Carroll requiring him to sell the landed property of the estate of the
586 said late William L. Balfour, deceased, and of a writ of sale issued to him on said order and decree, he had caused a legal notice and advertisement of the sale of all said landed property to be published for thirty clear days in the "Elton Eagle," the official printing newspaper of said parish of Carroll, representing that said sale would take place on the 2nd day of February, 1869, at the Erie plantation, for cash, and that on said day of sale, having repaired to the place of sale aforesaid, and after having read the said writ and

advertisement in a loud and audible voice, he offered to the highest bidder, for cash, the before-mentioned & following-described land and property, to wit: Lots or fractional sections Nos. 71, 72, 73, 74, 75, 76, 77, and 78, all in township No. 22 north, of range No. 13 east, together with lot or fractional section No. 30, in township No. 21 north, of range No. 13 east, all in the parish of Carroll and State of Louisiana, and containing about sixteen hundred and thirty-eight acres, more or less.

Whereupon Louis G. Balfour bid for the same the sum of three dollars per acre, which being over the appraised value of said property and the last and highest bid offered, the same was struck off and adjudicated to him.

That by reason of the premises the said appearer does hereby sell, convey, and deliver unto the said Louis G. Balfour all
587 the right, title, and interest of said estate of William L. Balfour in and to all of said mentioned and before-described tract or tracts of land, with all the improvements and appurtenances thereunto belonging, with full warranty of the title; and the said purchaser being present accepted of this act with all its parts and causes.

Thus done and signed the day and date first above written, in presence of Sam'l G. Willson and Matt. E. Kingley, competent witnesses, who, together with the parties and me, notary, sign this act.

(Sig'd) H. G. BLACKMAN, *Ex'r Est.*
" W. L. BALFOUR.
" L. G. BALFOUR.

Attest: SAM'L G. WILLSON.
MATT. E. KINGSLEY.

D. C. JENKINS, *Not. Public.*

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify the above and foregoing act of sale to be a correct copy of the original on file and of record in this office in Notarial Book "A," folios 46 and 47.

Witness my official signature and seal this the 17th day of July, 1882.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

588 EXHIBIT "G." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Deed. Geo. A. Sherridan, sheriff, to Jno. H. Green. 1868.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

FERD. M. GOODRICH *vs.* NARCISSA MORGAN, now GREEN.

Be it known that, by virtue of a writ of *fiere facias* issued from

said court in the above-styled case, to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Narcissa J. Morgan, to wit: Lots 41, 42, 43, 44, 48, and lot No. 1, and the upper half of lot No. 2, T. 19, R. 14 E., containing altogether 1,150 acres, more or less; also lots 7 and 8, in T. 19, R. 14 E., 330 $\frac{19}{100}$ acres, the N. $\frac{1}{2}$ of sec. 56, in T. 19, R. 13 E., containing 318 $\frac{40}{100}$ acres; also undivided $\frac{1}{2}$ of a lot of 120 acres, owned with Oliver J. Morgan, in sec. 51, T. 19, R. 13 E., being 60 acres; also undivided $\frac{1}{2}$, with H. Hood, of the W. $\frac{1}{2}$ of sec. 62, in T. 21, R. 12 E., containing 160 $\frac{38}{100}$ acres; all situated in said parish
589 and State, with all the interest in the buildings thereon or thereto belonging:

I, Geo. A. Sherridan, sheriff in and for the parish of Carroll, State of Louisiana, commissioned and sworn, did, on the 21st day of January, A. D. 1868, seize the above-described property, notice of which seizure was waived by J. W. Montgomery for defendant, in writing, and on the 1st day of August, A. D. 1868, I advertised said property for sale in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the 1st Saturday, the 5th day, of September, A. D. 1868; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon John H. Green became the purchaser thereof for the price and sum of seventeen hundred and thirty-four dollars, that being $\frac{2}{3}$ of the appraised value of said land.

Now, in consideration of the premises and by virtue of the authority in me vested by law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim *of* the said Narcissa J. Morgan, now Green, has or had in
and to said property; to have and to hold the same unto the
590 said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with T. D. McCandless and A. G. Belden, witnesses of lawful age, residing in said parish and State, this the 5th day of September, A. D. 1868.

(Sig'd) GEO. A. SHERRIDAN,
By JAS. W. DRAUGHAN,
D'y Sheriff.

(Sig'd) JNO. H. GREEN.
(Sig'd) T. D. McCANDLESS.
(Sig'd) A. G. BELDEN.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the above and foregoing deed is duly recorded, in my office, in Sheriff's Transfer Book "C," folio 280.

Given under my hand and seal of office this 17th day of October, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk*,
By R. J. LONDON, *D'y Clerk*.

I hereby certify the foregoing act of sale is a correct copy of the original record in Notarial Book "N," folios 122, 123.

Witness my hand and seal of office this 17th day of July, 1882.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

591 "EXHIBIT H." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Deed. W. W. Collins, sheriff, to Mrs. N. P. Williams. 1868.

STATE OF LOUISIANA, *Parish of Carroll*:

13th District Court.

Mrs. NARCISSA M. PATTEN *vs.* J. B. WILLIAMS.

Be it known that by virtue of a writ of *fiere facias* issued from said court and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, John B. Williams, to wit: One hundred and twenty-eight acres of land, to be taken from the upper portion of the plantation of the late J. M. Patten, dec'd, being the same land purchased by said Williams at sheriff's sale of the property of Selina A. Keat, only child of Selina A. Patten, dec'd:

I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisana, duly commissioned and sworn, did, on the 12th day of December, A. D. 1867, seize the above-described property, notice of which seizure I gave Jno. B. Williams, defendant, in writing, and on the 28th day of December, A. D. 1867, I adver-
592 tised said property in the "Carroll Record," a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the first day, of February, A. D. 1868.

And on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Mrs. Narcissa M. Patten, wife of Jno. B. Williams, became the purchaser thereof for the price and sum of two hundred and twenty dollars.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Jno. B. Williams has or had in and to said property:

To have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with W. D. Hardeman and L. B. Clarkson, witnesses of lawful age, residing in said parish and State, this the first day of Feb'y, A. D. 1868.

W. W. COLLINS, *Sheriff*,
By J. W. DRAUGHAN, *D'y Sheriff*.
NARCISSA P. WILLIAMS, [L. S.]
Authorized by me J. B. WILLIAMS.

Attest: W. D. HARDEMAN.
L. B. CLARKSON.

593 A true copy of the original.
Witness my hand and seal this 17th July, 1882.
[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

EXHIBIT "I." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Deed. Jas. A. and Selser Bass to W. G. Wyly. October 17, 1868.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that this day before me, D. McCandless, recorder in and for the parish of Carroll, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter — and undersigned, personally came and appeared Jas. A. Bass and Selser Bass, both residents of the aforesaid parish and State, and the said appearers declared that, for and in consideration of the total price and sum of two thousand dollars ($2,000.00) to them cash in hand paid, the receipt of which they hereby acknowledge and grant a full and clear acquittance therefor, they have and do hereby grant, bargain, alien, convey, transfer, set over,
594 and deliver, with a full, complete, and perfect guarantee and warrantee against all troubles, debts, mortgage, donations, alienations, or other encumberances of whatever kind or nature, not only against their own acts and deeds, but those of their vendors, hereby subrogating the present purchaser to all their rights of action for warranty against their vendors that they could have used themselves, unto William G. Wyly, resident of said parish and State, here present purchasing and accepting for himself, all the right, title, interest, and claim of said James A. Bass and Selver Bass in and to the estates of their father and mother, James A. Bass and Indiana T. Bass, both deceased, and especially all the right, title, interest, and claim in and to a certain plantation situated on the Miss. river in the aforesaid parish and State, supposed to contain about fourteen hundred (1,400) acres, and bounded on the north by lands of W. M. Deeson, east by the Miss. river, south by lands of Abraham Bass, and west by lands of est. of Wallace Keene, together with all the buildings and improvements thereon or thereunto be-

longing; to have and to hold their said interest in and to the aforesaid estates, and especially their interest in and to the plantation above described, unto the said William G. Wyly for his own proper use, benefit, and behoof forever, said appearers declaring that
595 it is their desire and intention hereby to subrogate the said Wyly to all their rights of heirship in and to the estate of their deceased parents, and especially to the plantation herein described, and to invest him with full power and authority to exercise said rights the same as they themselves might or could have done.

And the said appearers, James A. and Selser Bass, severally declared themselves to be over twenty-one (21) years old, and that they had not heretofore disposed of or encumbered their interest in and to their father's and mother's estates or either of them.

The mortgage certificate required by article 3328 of the civil code of this State is dispensed with by the purchaser, William G. Wyly, and me, recorder, held harmless for its non-production at the passing hereof.

Thus done and passed at my office, in the town of Floyd, in said parish and State, in presence of Wm. McWilliams and Govy Hood, lawful witnesses, who hereto sign their names with said appearers and me, recorder, on this the 17th day of October, in the year of our Lord 1868.

(Sig'd) JAS. A. BASS.
SELSER BASS.
W. G. WYLY.

Attest: WILLIAM McWILLIAMS.
GOVY HOOD.

T. D. McCANDLESS, *Recorder.*

East Carroll, La.

596 I hereby certify the above to be a true copy of the original record in this office in Notarial Book "N," folios 121 & 122. Witness my official signature and seal of office this 17th day of July, 1882.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

EXHIBIT "J." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Deed. George A. Sherridan, sheriff, to H. Frellsen. 1869.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

HENRY FRELLSEN
vs.
GOVY HOOD. } No. 4890.

Be it known that by virtue of a writ of *fiere facias* issued from the

office of the clerk of the 13th district court in the above-styled suit and to me directed, commanding me to *sieze* and sell the following-described property belonging to the defendant, Govy Hood, to wit: A certain tract or tracts or parcels of land situate in said parish and State described by official survey as the S. E. ¼ of sec. 48, S. W. ¼ of sec. 49, N. E. ¼ of sec. 57, lots 1, 3, 4, 5, and 6 of sec. 56, lot 3 of sec. 61, lots No-. 1 and 7 of sec. 60, lot No. 4, sec. 55, lots 5, 6,
597 and 7, sec. 51, and lots 1, 2, and 3, sec. 54, all in T. 21, R. 12 E.; also the undivided ½ of W. ½ of sec. 62, same township and range, containing in all 1,992 $\frac{75}{100}$ acres, together with all the improvements thereon or thereto belonging, I, George A. Sherridan, sheriff, by my duly authorized deputy, James W. Draughan, did, on the 23d day of November, A. D. 1868, *sieze* the above-described property under and by virtue of said writ, notice of which *sie*zure was waived in writing by said defendant at the foot of said execution, and on the same day, month, and year said defendant waived the advertisement required by law, except so far as to post the same in three public places in said parish and State, to be sold on the first Saturday, the 5th, of December, A. D. 1868, at the door of the court-house in the town of Floyd, in said parish and State, for cash, with the benefit of appraisement, which I accordingly did.

And on said day of sale, after reading the advertisement and the recorder's certificate of mortgage, and having said lands duly appraised, and after reading all the waivers made by said defendant, together with his written consent that the same might be sold on the 1st Saturday, the 5th, of December, A. D. 1868, without other advertisement than by posting as aforesaid, I offered said land for sale in an audible voice at public auction to the highest bid-
598 der; whereupon Henry Frellsen, by his attorneys, Sparrow and Montgomery, bid for said lands, as the highest and last bidder, the sum of six hundred and sixty-four $\frac{20}{100}$ dollars, that being ⅔ of the appraised value of said land. Now, in consideration of the premises and by virtue of the authority in me vested by the laws of the State of Louisiana, and by further reason of the acknowledgement of said parties of a credit on the execution for the amount of said acts, I do by these presents sell and adjudicate unto the said Henry Frellsen all the right, title, interest, and claim which the said Govy Hood has or had in and to the foregoing-described property:

To have and to hold the same unto the said Henry Frellsen and his heirs and assigns forever.

Thus done and executed this the 5th day of Dec., A. D. 1868, in presence of Albert G. Belden and William A. Page, lawful witnesses, who hereto sign with me, said sheriff as aforesaid, and the parties purchasing and accepting this act.

(Sig'd) G. A. SHERRIDAN, *Sheriff*,
" By J. W. DRAUGHAN, *D'y Sheriff*.
" H. FRELLSEN.
" By SPARROW AND MONTGOMERY.

Attest: A. G. BELDEN.
W. A. PAGE.

A true copy of the original on file in this office.
Witness my hand and seal of office this 17th day July, 1882.
[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

599 EXHIBIT "K." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Deed. Geo. A. Sherridan, sheriff, to F. M. Goodrich. February, 1870.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

Mrs. ROSA CAMMACK } *vs.* OLIVER T. MORGAN. } No. 236.

Be it known that by virtue of two writs of *fiere facias* issued from said court in the above-styled cases and to me directed, commanding me to *sieze* and sell the following-described property belonging to the defendant, Oliver T. Morgan, to wit:

The undivided five-sixteenths in and to the following-described land situate in the parish of Carroll, State of Louisiana, known as the plantation of the estate of Jonathan Morgan, composed of lots 41, 42, 43, 44, 48, and the lower half of lot 49, in township 19, of range 13 east, and lot 1 and the upper half of lot 2, in T. 19 N., of R. 14 E.; also lots 7 and 8, in T. 19, R. 14 E.; north half of sec. 56, T. 19, R. 13 E.; also the undivided half of one hundred and twenty acres owned with the estate of O. J. Morgan, in sec. 51, T. 19, R. 13 east, containing in all seventeen hundred and fifty-eight $\frac{55}{100}$ acres:

600 I, Geo. A. Sherridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 18th day of November, A. D. 1869, seize the above-described property, notice of which seizure was waived by O. T. Morgan, defendant, in writing, and on the 18th day November, A. D. 1869, I advertised said property by posting the same in three public places in said parish and State to be sold at the door of the court-house in the town of Floyd, in said parish and State, on Saturday, the 19th day of December, A. D. 1869, in accordance with waiver filed in above suits, for cash, with the benefit of appraisement; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Ferdinand M. Goodrich became the purchaser thereof for the price and sum of nine hundred and fifteen $\frac{51}{100}$ dollars, which amount I paid over to said parties concurrently, as shown by the return on the words of *fi. fa.* filed in suits 5235 and 5236 on file in the office of the clerk of the 13th district court, that being $\frac{2}{3}$ of the appraised value of said lands.

Now, in consideration of the premises and by virtue of the au-

thority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, and interest and claim which the said Oliver T. Morgan has or
601 had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereto sign my name officially, together with —— —— and —— ——, witnesses of lawful age, residing in said parish and State, this the 19th day of December, A. D. 1869.

(Sig'd) GEO. A. SHERRIDAN, *Sheriff*,
By J. W. DRAUGHAN, *D'y* "
FERD. M. GOODRICH.

A true copy of the original on file and of record in this office in Notarial Book "H," folios 354, 355.

Witness my hand and seal this 17th day of July, 1882.

[SEAL] (Sign-d) GEO. J. HOOK,
D'y Recorder.

EXHIBIT "L." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Deed. Geo. A. Sherridan, sheriff, to F. M. Goodrich. 1868.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

FERD. M. GOODRICH *vs.* AGNES A. MORGAN, now RICKETTS.

602 Be it known that by virtue of writ of *fiere facias* issued from said court in the above-styled suit and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Agnes A. Morgan, to wit: — 41, 42, 43, 44, 48, and the lower ½ of lot 49, T. 19, R. 13 E., and lot No. 1 and the upper ½ of lot No. 2, in T. 19, R. 14 E., containing 1,150 acres; also lots 7 and 8, in T. 19, R. 14 E., containing 330.19 acres; also the N. ½ of sec. 56, in T. 19, R. 13 E., containing 318.40 acres; also an undivided ½ of a lot of 120 acres, owned with Oliver J. Morgan, in sec. 51, T. 19, R. 13 E., in said parish and State, being 60 acres; also an undivided ½, with H. Hood, of the W. ½ of sec. 62, T. 21, R. 12 E., containing 1,600.38 acres, together with all her interest in the buildings and improvements thereon or thereto belonging:

I, Geo. A. Sherridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 21st day of June, A. D. 1868, seize the above-described property, notice of which seizure was waived by J. W. Montgomery, att'y for def't, in writing, and on the first day of August, A. D. 1868, I advertised said property for sale in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the

5th day of September, A. D. 1868; and on said day of sale,
603 at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Ferd. M. Goodrich, plaintiff, became the purchaser thereof for the price and sum of seventeen hundred and thirty-four dollars, that being the full am't of the appraised value of said property.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Agnes A. Morgan, now Rickett, has or had in and to said property, to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

I- testimony whereof I hereto sign my name officially, together with T. D. McCandless and A. G. Belden, witnesses of lawful age, residing in said parish and State, this 5th of Sept., A. D. 1868.

(Sig'd) GEO. A. SHERRIDAN, *Sheriff*,
By J. W. DRAUGHON, *D'y* "
FERD. M. GOODRICH.

Attest: T. D. McCANDLESS.
A. G. BELDEN.

I certify the above to be a true copy of the original act on file and of record in the office in Notarial Book "H," folio 123. Given under my hand and seal this 17th July, 1882.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

604 EXHIBIT "M." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Succession of James Railey. Certified copy of petition for and homologation of final account of executor, &c.

To the hon. the judge of the district court in and for the parish of Carroll:

The petition of Mrs. Catherine Carson, testamentary executor of the last will of Dr. James G. Carson, shows that on the — day of —— Dr. James G. Carson was duly qualified and confirmed as testamentary executor of the last will and testament of James Railey; that on the 17th July, 1862, the said executor filed an annual account of his administration in your hon. court, and which has been, after due and legal delays and notices, allowed and homologated.

That he continued to administer said estate until the approach of the Federal army made it unsafe to keep the slaves and movable property on the premises; and, therefore, under the advice of the counsel who represented him for the benefit of the estate, he removed said property to the State of Texas, where he had removed his
605 own property; that whilst there nothing more than a support for the slaves was made.

That subsequent to the account so filed but small crops were made by the estate on account of the disturbed condition of the country consequent upon the war then existing; that part of the crops that were made were taken by the Confederate authorities, for which he was allowed and compelled by them to receive Confederate money & bonds, and a large portion of the crops were by them destroyed; that the said Confederate money and bonds were expended for the benefit of the estate, as shown in the account which is annexed and rendered in behalf of said executor; that said executor employed as counsel to represent him and said estate Messrs. Sparrow and Montgomery, atty's-at-law; that for their services rendered to said executor and said estate a statement of their claims and charges, including the claim for rendering this final account, is made, and which petitioners pray- may be allowed and paid as part of the expenses of administration; and petitioner further prays that said account may be allowed and homologated by a judgment of the court, and that a counsel of absent heirs be appointed to represent the heirs, Mrs. F. W. Boyd, Charles and Otey Railey, all of whom are absent, and contradictorily with whom said account may be adjudicated
606 upon. After due notice to him said counsel prays for general relief in the premises.

(Sig'd) SPARROW AND MONTGOMERY, *Atty's.*

(Endorsed:) Filed Nov. 10, '66. J. L. Cheatham, clerk.

I do solemnly swear that I will faithfully perform and discharge all the duties incumbent on me as counsel of absent heirs in the succession of James Railey to the best of my knowledge and ability, so help me God.

(Sig'd) C. A. DE FRANCE.

Sworn to and subscribed before me this the 5th day of January, 1867.

(Sig'd) J. L. CHEATHAM, *Clerk.*

Upon considering the foregoing petition and account annexed it is ordered that legal notice be given of the filing of said account, and after the expiration of the legal delays, if no opposition is made, let the said account be approved and homologated as prayed for.

It is further ordered that Chas. A. De France, att'y-at-law, be appointed counsel of the absent heirs of said succession, to wit, for Mrs. F. W. Boyd and Charles and Otey Railey, non-residents of this State.

Parish of Carroll, La., Jan'y 5th, 1867.

(Sig'd) J. L. CHEATHAM,
Clerk District Court.

607 I hereby accept service of the within petition and account filed, having carefully examined the same, and waive citation and service of copies of the same, and waive legal delays, to save costs to the heirs.

Floyd, La., Jan'y 5th, 1866.

(Sig'd) C. A. DE FRANCE,
Counsel for Absent Heirs.

Notice.

Mrs. Catherine Carson has filed a final account of the administration of her late husband, Dr. James G. Carson, dec'd, in the matter of the succession of the late James Railey, deceased. If no opposition is made thereto on or before the first *in* March next, said account will be approved and homologated.

Parish of Carroll, La., Jan'y 5th, 1867.

(Sig'd) J. L. CHEATHAM,
Clerk District Court.

By reason of the law and evidence, and by further reason of no opposition having been made, it is, therefore, ordered, adjudged, and decreed that the annexed final account of Mrs. Catherine Carson of the acts and doings of her late husband, James G. Carson, as executor of the succession of the late James Railey, deceased, be, and the same is hereby, approved and homologated.

608 Done and signed this the 2nd day of February, A. D. 1867, at clerk's office, parish of Carroll, Louisiana.

(Sig'd) J. L. CHEATHAM,
Clerk District Court.

By reason of the law and the evidence, and by further reason of the legal notices having been given, and expiration of the legal delays, and no opposition having — made, it is, therefore, ordered, adjudged, and decreed that the account hereto annexed, filed on the 10th day of November, A. D. 1866, by Mrs. Catherine Carson, setting out and making a complete showing of all the transactions of her late husband, John G. Carson, as executor of the estate of the late James Railey, dec'd, be, and the same is hereby, approved and homologated.

Done and signed at clerk's office, parish of Carroll, Louisiana, this the 6th day of April, A. D. 1867.

(Sig'd) J. L. CHEATHAM,
Clerk District Court.

STATE OF LOUISIANA, *Parish of Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the within and foregoing is a true copy of the original document on file in this office.

Witness my hand and seal of said court this the 11th day of March, A. D. 1882.

(Sig.) F. H. G. TAYLER, *D'y Clerk.*

609 (Endorsed:) Estate of James Railey, deceased. Certified copy of final account of the administration of Dr. James G. Carson, executor.

Final account of the administration of Dr. James G. Carson, executor of the last will and testament of James Railey, rendered for the succession of said Carson by Mrs. Catherine Carson, testamentary executor.

The executor is charged as debits for the following items:

Nov. 28, 1862.	To proceeds of 11,578 bushels corn taken by Confederate military authorities, for which they paid him @ 50c. Confederate money	5,789 00
" " "	41,950 bundles fodder taken by Confederate's military, for which they allowed ex'r $1.00 per hundred in Confederate money	419 50
" " "	proceeds 211 bales cotton taken by Confederate government, for which he received in Confederate bonds	8,636 82
" " "	proceeds 233 bales cotton taken by the Confederate government, for which he was allowed in Confederate bonds	9,262 93
		$24,108 25

The balance of the crops were destroyed by order of the Confederate military commanders and the sums so received as above were disbursed in expenses of the estate of James Raily as per contract.

The executor is entitled to credit for the following items paid out and expended in behalf of the est. of James Railey:

610	1862.			
	Nov. 22.	By am't p'd clerk's costs, as per voucher No. 1		15 60
Nov.	22.	By am't p'd clerk's costs, as per voucher No. 2		10 00
	"	"	clerk of court for fee of att'y of absent heirs ---------- No. 3	10 00
"	29.	"	H. B. Tibbetts for beef cattle, " 4	1,198 00
Dec.	16.	"	W. A. Tharp " " " " 5	3,487 50
"	28.	"	J. B. Beard 688 bushels corn, " 6	516 00
"	"	"	T. T. Oliver for 12 beef cattle, No. 7	617 35
	1863.			
Jan'y	10.	"	Wm. Craig for overseeing No. 8	864 00
"	"	"	T. F. Gaddis for beef cattle " 9	1,632 83
"	23.	"	R. C. McGee, services rendered, No. 10	60 00
"	"	"	Mrs. A. G. Stone for pork No. 11	400 00
Feb'y	7.	"	Jas. C. Massey, 5,000 bushels corn, No. 12	3,750 00
"	23.	"	Sam'l Templeton for corn No. 13	1,500 00
"	"	"	T. F. Oliver 10% discount in exchanging Confederate bonds for bill to use for est. ------ No. 14	300 00

"	28.	"	"	J. C. Erwin, overseer's wages for 1861 ---------- No. 15	869 33
"	"	"	"	R. C. McGee for services in removing property ------ No. 16	400 00
Apr.	16.	"	"	R. C. McGee for ditto ---- " 17	140 00
"	10.	"	"	taxes for Carondalett place, No. 18 ----------	639 40
"	"	"	"	taxes for Raleigh place -- No. 19	736 71
		"	"	J. W. McClendor for services removing property ------ No. 20	212 20
		"	"	J. C. Drew for corn ------ " 21	1,198 33
		"	"	Dr. Davis for medicine & hauling ---------- No. 22	140 00
		"	"	S. D. Oliver for cotton cords, " 23	270 00
		"	"	S. E. Lester for ferriage -- " 24	30 00
		"	"	C. B. Richardson for corn - " 25	325 00
		"	"	E. Graves, jailer's fees ---- " 26	17 00
		"	"	Thos. Maddox bill for work on mill ---------- No. 27	44 00
		"	"	H. Gersen & Co. bill for osnabergs ---------- No. 28	1,117 20
		"	"	invoice molasses, &c. ---- " 29	151 72
		"	"	due ex'r, as per account rendered by Jackson Worley, for expenses for removing property from near Federal lines, @ $7.52 per head for each negro ---------- No. 30	2,110 30
611				Am't cash advanced, as per ac. & receipt of Wm. Craig ---------- No. 31 --	400 00
				Am't paid out for expenses incurred by J. C. Erwin, overseer, in removing negroes, at $8.03 per head ---------- No. 32 --	3,298 84
				Am't of cash advanced to Wm. Craig to defray expenses in removing property ---- No. 33 --	1,074 00
					$27,534 11
By am't brought for'd ----------					27,534 11
To "		"	"	----------	24,108 25
"	"	cash rec'd, as per voucher 33, above ----------			440
"	"	"	"	" 31, " ----------	25 25
"	"	"	for 487 ft. lumber ----------		12 17
"	"	"	" bagging & iron sold J. B. Beard ------		145 60
To am't profits on making salt at Lake Bristeneau -----					1,911 96
					$26,643 23
By am't bro't down ----------					$27,534 11
To "		"	"	----------	26,643 23
					$890 88

The items of the foregoing were founded — Confederate money; the following items are founded on lawful currency:

By balance, as per ac. rendered on file in court	727	64
" commissions on the inventory, @ 2½%	10,805	00
Am't due ex'r	$11,532	64

Statement of debt which the executor incurred for the estate and which is unpaid, but which accountant asks to be allowed and paid by the est. of James Railey, dec'd, as part of the expenses of administration, including charges for the ac.

612 Am't due Sparrow and Montgomery, attorneys, for probating the last will and testament, opening the succession, superintending the taking of the inventory, consultations with and general advice to executor, rendering the ac. now on file and allowed, and for filing this account and professional services in conducting the same to final settlement (the inventory being $432,233.00), $6,000.00.

STATE OF LOUISIANA, *Parish of Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the within and foregoing is a true and correct copy of the original on file in this office.

Given under my hand and the seal of said court this 10th day of March, A. D. 1882.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
Deputy Clerk.

613 EXHIBIT "N." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant July 26th, 1882. Filed July 26th, 1882.

(Endorsed:) Creditors *vs.* Succession of James Railey. No. 5104.

Petition.

To the hon. the judge of the 13th district court in and for the parish of Carroll:

The petition of G. Malin Davis, of Natchez, Mississippi, who sues for the use of Mrs. Elizabeth S. Davis; of August Belmont, of New York city; of A. and M. Heime, who compose the commercial firm of that style, doing business in New Orleans; of E. Carver Company, a company duly chartered by the State of Massachusetts; of the Citizens' Bank of Louisiana, and of J. S. and R. E. Neal, of Madison, Indiana, respectfully represents—

That your petitioners appear herein as the creditors of James Railey, dec'd, whose succession has been opened in your hon. court by the appointment and qualification of F. W. Boyd as dative testamentary executor of the last will and testament of said Railey; that said succession is indebted unto your petitioner, G. M. Davis, for use aforesaid in the sum of twenty-nine thousand dollars, less credit

hereinafter mentioned on back of the first note annexed,
614 which indebtedness is found on the two notes of said Railey in favor of petitioners, executed on 30 March, 1859, at Natchez, the first for fifteen thousand dollars, due one year after date, with ten per cent. per annum interest after maturity till paid, upon which is a payment credited on the 7th of April, 1860, for the interest due to March 30, '60, & four thousand five hundred dollars on the principal; the second for fourteen thousand dollars, due two years after date, with same rate of interest after due till paid; that by the laws of Mississippi, where said notes were made, it is lawful to charge 10% interest on money loaned; that said Railey, in order to secure the payment of said notes and interest as they became due, on the 30th of March, 1859, by act passed before G. W. Williams, recorder of the parish of Concordia, executed unto your petitioner a special mortgage, whereby he hypothicated unto your petitioner, G. M. Davis, the following-mentioned property, situated in your said parish, viz: That tract of land & plantation situated in this parish formerly known as "Polkland," but now styled "Carondalet," bounded on the east by land of Wm. Henderson & J. B. Beard, on the north by land of J. B. Beard and estate of Jonathan Morgan, on the south by land of Wm. Henderson and John Denson, and on the west by land of Bowmar and Newman, all in township 19 north of range 13 east, and containing one thousand one hundred and sixty-six acres, being the same purchased by mortgagor from Lucien
615 Polk on 16th December, 1854, a copy of which act of mortgage is annexed for reference.

That said estate is indebted unto your petitioners, A. and M. Heine, in the sum of four thousand five hundred dollars for this, that on the 9th of January, 1860, the said Railey made his note for that sum, payable to the order of W. Cox and Co. in thirteen months after date, with 8 % per annum interest after maturity, which note was duly endorsed by payees over to said petitioner-, and that when it became due it was legally protested for non-payment, whereby said Railey became indebted in the further sum of $3.50, costs protest.

That — estate is indebted unto your petitioner, The Citizens' Bank of Louisiana, in the sum of fifteen hundred dollars for this, that on 3 December, 1861, the executor thereof gave his note for plantation supplies to W. Cox and Co. to the amount aforesaid and due six months after date, with 8 % per annum interest from due till paid, which note was endorsed by payees and delivered to petitioner.

That said estate is indebted unto your petitioner, E. Carver Company, in the sum of eight hundred dollars and interest from August 30th, 1860, founded on an account for two cotton gins furnished said Railey.

That said estate is indebted unto your petitioners, J. S. and R. E. Neal, in the sum of twenty-seven hundred and sixteen $\frac{75}{100}$ dollars and interest since 23 August, 1860, which debt is founded on
616 an open account against said Railey for the price of a steam-engine, boiler, and appliances.

That said estate is indebted unto your petitioner, Augustus Belmont, in the sum of fifteen thousand dollars for this, that on the 22nd February, 1858, the said Railey executed and delivered unto Joseph H. D. Bowmar a promissory note for that sum, due 15 January, 1862, with 8 % per annum interest from due, which, being endorsed over by payee in full to August Belmont & Co, was by them endorsed in blank & delivered to your petitioner, Belmont; that said Railey gave said note for part of the price of a plantation sold to him by said payee on the 22nd February, 1858, by act passed before Eli Harris, "not. pub.," which land is situated in this parish, on the west bank of the Miss. river, bounded on the east by the estate of Jonathan Morgan, south by lands of J. B. Beard and Wm. Henderson, on the west by the lands known as the Railey plantation, all in township 19 north, of range 13 east, & containing six hundred and forty acres, and which in said act was specially mortgaged unto said payee in order to secure said note.

Petitioner shows that all of said claims have been admitted by the executor of the last will of said Railey and ordered to be ranked by the judge among the acknowledged debts of said succession, and are annexed thereto as part hereof.

617 Petitioners pray that said dative testamentary executor may be cited and ordered to render an account, in default whereof that he may be destituted of his letters of executorship and another executor be appointed in his stead; that the property of the estate may be sold in due course of law in order to pay said debts, and that out of the proceeds of the sale thereof the said mortgaged debts may be respectively paid by preference according to their respective rank and privilege on said respective tracts of land; that the other creditors may be paid concurrently, except your petitioner, E. Carver Company, be decreed to have a privilege on said cotton gins, and that your petitioners J. S. and R. E. Neal be decreed to have a privilege on said steam-engine, boiler, &c., and that they be paid respectively out of the proceeds thereof by preference as vendors, &c. Petitioners pray for cost and general relief in the premises, &c.

(Sig'd) SPARROW AND MONTGOMERY, *Att'ys.*

Order.

Upon considering the foregoing petition and documents annexed, it is ordered that Frederick W. Boyd, dative testamentary executor of the last will and testament of the late James Railey, dec'd, do file an account setting forth fully and explicitly his acts and doings as dative executor aforesaid, as well as the exact condition of said succession generally within ten days from the service hereof, and according to law.

Parish of Carroll, Aug. 29th, '66.

(Signed) J. L. CHEATHAM,
Clerk Dist. Court..

618 (Endorsed:) Creditors *vs.* Succession of James Railey. Petition, claims, and mortgage. Filed Aug. 29, 1866. J. L. Cheatham, clerk.

Citation.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

CREDITORS
vs.
SUCCESSION JAMES RAILEY. } No. 5104.

The State of Louisiana and said court to Frederick W. Boyd, dative testamentary executor, residing in said parish and State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said creditors of said succession, a duly certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of said court, held at Floyd, in said parish, within twelve days after service hereof, and according to law.

Witness the Hon. E. D. Farrar, judge of the said court, and the seal of the said court, this 30th day of August, in the year of our Lord 1866.

[SEAL.] (Sig'd) J. L. CHEATHAM, *Clerk.*

Delivered Aug. 30th, 1866.

Received, Floyd, Carroll parish, La., Thursday, Aug. 30th, 1866, the within citation, together with a certified copy hereof, and a certified copy of pl't'ffs' petition, and on Tuesday, 11th September, A. D. 1866, served said copies by handing the same to Geo.
619 Harrison, a free white person above the age of 14 years, which I ascertained by interrogation, residing on the Front Raley place, in the parish of Carroll, Louisiana, that being the placed claimed as the residence of the said Frederick W. Boyd, ex'r, he being absent from home at the time of service hereof.

(Sig'd) W. W. COLLINS, *Sheriff.*

Note No. 1.

$15,000.00. NATCHEZ, *March 30th*, 1859.

One year after date I promise to pay to G. Malin Davis or order the sum of fifteen thousand dollars for value received, being for a *bona fide* loan of money, to bear interest at ten per centum per annum after maturity until paid, payable at W. A. Britton & Co.'s, Natchez, and renewable for one year upon the payment of one year's interest at ten per cent. at maturity, provided notice of the wish so to renew be given ninety days before maturity.

(Sig'd) J. RAILEY.

[Written across the face:]

Ne varietur. 30 March, 1859.

J. W. WILLIAMS, *Recorder.*

Examined and allowed Oct. 18th, 1862.

R. BULLOCK, *Judge.*

Registered Oct. 18th, 1862.

R. S. WOOD, *Clerk.*

Endorsed.

The interest paid on this note to March 30, 1861, and four thousand five hundred dollars of the principal thereof, and renewed for balance for one year, as per agreement in note.

(Sig'd) G. MALIN DAVIS.

April 7th, 1860.

620 Let the within note be ranked among the acknowledged debts of the succession, to be paid in due course of law.

April 5th, 1866.

(Sig'd) E. D. FARRAR,
Judge 13th District.

Pay to E. S. Davis or order.

G. MALIN DAVIS.

DEC. 8TH, 1865.

The within note presented to me, as adm'r, for payment, and knowing the same to be correct and unpaid (except the credits endorsed), I have no objection thereto in due course and according to rank.

(Sig'd) F. W. BOYD,
Dat. Test. Adm'r.

STATE OF MISSISSIPPI, *Adams County,* } *ss:*

Personally appeared before me, Rob't S. Wood, clerk of the probate court of said county, Mrs. E. S. Davis, who, being duly sworn, deposeth and saith that no part of the money intended to be secured by the annexed instrument hath been received or any security or satisfaction given for the same either to or by herself or assignee, except what is credited thereon and the mortgage on the face thereof referred to.

(Sig'd) E. S. DAVIS.

Sworn to and subscribed before me October 18th, 1862.

(Sig'd) R. S. WOOD, *Clerk.*

621 *Note No.* 2.

$14,000.00. NATCHEZ, *March 30th,* 1859.

Two years after date I promise to pay to G. Malin Davis or order the sum of fourteen thousand dollars for value received, being for a *bona fide* loan of money, to bear interest at ten per centum per annum after maturity till paid, payable at W. A. Britton & Co.'s, Natchez, and receivable for one year upon prepayment of one year's interest at ten per cent. at maturity, provided notice of the wish so to renew be given ninety days before maturity.

(Sig'd) J. RAILEY.

(Written across the face:)

Ne varietur. 30th March, 1859.

(Sig'd) G. W. WILLIAMS, *Recorder.*

Examined and allowed Oct. 18th, 1862.
(Sig'd) R. BULLOCK, *Judge.*

Registered Oct. 18th, 1862.
(Sig'd) R. S. WOOD, *Clerk.*

Endorsed.

Let the within note be ranked among the acknowledged debts of the succession, to be paid in due course of law.
April 5, 1866.
(Sig'd) E. D. FARRAR,
Judge 13th District.

Pay to E. S. Davis or order.
G. MALIN DAVIS.

622 DEC. 8TH 1865.

The within note presented to me, as adm'r, for payment, and knowing the same to be correct and unpaid, I have no objection thereto in due course and according to rank.
(Sig'd) F. W. BOYD,
Dat. Test. Adm'r.

Affidavit.

STATE OF MISSISSIPPI, *Adams County,* } *ss:*

Personally appeared before me, Rob't S. Wood, clerk of the probate court of said county, Mrs. E. S. Davis, who, being duly sworn, deposeth and saith that no part of the money intended to be secured by the annexed instrument hath been received or any security or satisfaction given for the same either to or by herself or assignee, except the mortgage upon the face thereof referred to.
(Sig'd) E. S. DAVIS.

Sworn to and subscribed before me Oct. 18th, A. D. 1862.
(Sig'd) R. S. WOOD, *Clerk.*

Note to W. Cox & Co.

$4,500. CARROLL PARISH, LA., *Jan'y* 9, '60.

623 Thirteen months after date I promise to pay to the order of W. Cox & Co., at their office, in New Orleans, La., forty-five hundred dollars for value received, with interest at the rate of eight per cent. per annum after maturity until paid, due 9–12 Feb'y, 1861.
(Sig'd) J. RAILEY.

(Endorsed:) W. Cox & Co.

By consent the payment of the note is postponed until the 9th of February, 1862, interest on same having been paid to that date in advance.
New Orleans, February 12th, 1861.
(Sig'd) W. COX & CO.

Demand, protest, & notice of protest are waived, and we hold ourselves bound for the payment of this note in the same manner as if the demand, protest, and notice of protest had been duly given.

New Orleans, 12th February, 1862.

(Sig'd) W. COX & CO.

I acknowledge this to be a just claim against the succession of James Railey, deceased, and promise to pay the same in due course of administration.

11th Dec., 1865.

(Sig'd) F. W. BOYD,
Dat. Test. Adm'r.

A true copy of the original note sued on in said suit No. —.

Given under my hand and seal of office this 20th day of December, A. D. 1860.

(Sig'd) J. L. CHEATHAM, *Clerk*,
Per ROB'T J. LONDON, *D'y Clerk.*

Endorsed: 5104. Copy of note withdrawn.

624 *Protest.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument I protest.

Be it known that on this 12th day of February, in the year one thousand eight hundred and sixty-one, at the request of A. Montreuil, Esq., cashier of the Bank of Louisiana, holder of the original note whereof a true copy is on the reverse hereof written, I, Felix Grima, notary public in and for the city and parish of New Orleans, duly commissioned and sworn, by my deputy, Chas. B. Bany, presented said note to a clerk of Messrs. W. Cox & Co., at their office, where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited with them to pay said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of said note.

Thus done and protested in the presence of *of* Chas. F. Bany and Louis Dutorin, both of this city, witnesses:

In testimony whereof I grant these presents under my sig-
625 nature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Sig'd) F. GRIMA, *Not. Pub.*

(Endorsed:) Protest. 12th February, 1861. J. Railey's note, amount, $4,500; fee, $3.50. Messrs. A. & M. Heine. Felix Grima, not. pub. No. 4665. $4,500. W. Cox & Co. Postponed to 9–12 February, 1862. Cost of protest paid in cash, with interest.

Copy of Protested Note.

$4,500. CARROLL PARISH, LA., *9th January*, 1860.

Thirteen months after date I promise to pay to the order of W. Cox & Co., at their office in New Orleans, La., forty-five hundred dollars, for value received, with interest at the rate of eight per cent. per annum after maturity until paid.

(Sig'd) J. RAILEY.

(Endorsed:) W. Cox & Co. A. & M. Heine.

I, the undersigned notary, do hereby certify that the parties to the original whereof a true copy is above written have been duly notified of the protest thereof by letters to them by me written and addressed on the day of the said protest and served on them respectively in the manner following, viz:

* * * * * * *

In faith whereof I have hereunto signed my name, together with witnesses, at New Orleans, this — ——, eighteen hundred & sixty. —— ——.

626 $1,500.00. NEW ORLEANS, *Dec. 3rd*, 1861.

Six months after date I promise to pay to the order of W. Cox & Co., at their office in this city, fifteen hundred dollars, with eight per cent. interest per annum from maturity till paid. This note is given in payment of necessary plantation supplies furnished the Raleigh plantation, belonging to the estate of James Railey, in Carroll parish, and constitutes a privilege claim to its fullest extent till satisfied to the exclusion of all others upon all cotton from said Raleigh plantation sold after date hereof.

(Sig'd) J. G. CARSON, *Ex'r.*

Due June 3–6, '62. 101.

Endorsed: 8677. J. G. Carson. $1,500.00. 6 June. W. Cox & Co. Protest, demand, and notice of protest waived. (Sig'd) W. Cox & Co.

THE STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Personally appeared before me, D. F. Mitchell, second justice of the peace for the parish and city aforesaid, C. S. Hunt, of the firm E. Carver Co., who, being duly sworn, deposes and says that the annexed account of E. Carver Co. against James Railey for $808.88 is, to his own personal knowledge, correct, due, and owing as stated.

(Sig'd) C. S. HUNT.

627 Sworn to and subscribed before me, in the city of New Orleans, this 19th day of Feb'y, 1861.

(Sig'd) D. F. MITCHELL,
Second Justice of the Peace.

Account Carver Co.

NEW ORLEANS, *Aug.* 30, 1860.

Mr. James Railey, bo't of E. Carver Co., sole manufacturers unde Carver's patents of 1845, extending — 1859, with all later improvements, No. 46 St. Charles street.

Two cotton gins:

No. 5464. 80 R. } With roll cleaners.
" 5465. 80 L. } 160 saws at $5.00 per saw, $800.00.
Int. from Jan'y 1, '61.
Marked James Railey, Railey's Landing.

I recognize this as a just claim against the estate of James Railey, to be paid in the course of the administration.
M'ch 3rd, 1861.
(Sig'd) J. G. CARSON, *Executor.*

The above account was presented to me this day.
Vicksburg, 4 January, 1866.
(Sig'd) F. W. BOYD,
Dat. Test. Executor.

(Endorsed:) Let the within account be ranked among the acknowledged debts of the succession, to be paid in due course of law. April 6th, 1866. (Sig'd) E. D. Farrar, judge 13th district.

628 *Mortgage.*

STATE OF LOUISIANA, *Parish of Concordia:*

Be it known and remembered that on this thirtieth day of March, in the year eighteen hundred and fifty-nine, before me, the undersigned, G. W. Williams, recorder of said parish and *ex officio* notary public, and in the presence of the witnesses subscribing, personally came James Railey and Matilda S. Green, his wife, herein duly authorized and assisted by her said husband, and G. Malin Davis, all residents of Adams county, Mississippi, and the said James Railey declared that he was and is justly indebted to the said G. Malin Davis in the sum of sixty-five thousand dollars ($65,000.00), as evidenced by and contained in the five several promissory notes of him, the said Railey, to and in favor of the said G. Malin Davis or order, all dated Natchez, M'ch 30th, 1859, for value received, being for a *bona fide* loan of money, bear- interest at ten per centum per annum after maturity until paid, payable at W. A. Britton & Co.'s, Natchez, and each containing a clause or stipulation that it is renewable for one year upon prepayment of one year's interest at ten per cent. at maturity, provided notice of the wish so to renew is given ninety days before maturity, which five notes are for the sums
& payable at the dates, respectively, as follows:
629 The first for fifteen thousand dollars ($15,000) and due one year after date, the second for fourteen thousand dollars

($14,000) and due two years after date, the third for thirteen thousand dollars ($13,000) and due three years after date, the fourth for twelve thousand dollars ($12,000) and due four years after date, the fifth for eleven thousand dollars ($11,000) and due five years after date; all of which five notes are by me this day paraphed "*ne varietur*" and identified with this act.

Now, in order to effectually — the full & final payment of the said promissory notes & all interest thereon & any & all renewals thereof, the said James Railey declares that he therefore specially mortgages & hypothecates unto the said G. Malin Davis and his assigns the following-described property, situate and being in the parish of Carroll and State of Louisiana, to wit: All and singular that tract and plantation of land formerly known and called "Polkland" place, and now styled Carondalett, bounded on the east by land of Wm. Henderson and J. B. Beard, on the north by land of J. B. Beard and estate of Jonathan Morgan, on the south by land of Wm. Henderson and John Denson, and on the west by land of Bowmar and Newman, all in township number nineteen (19) north, of range number thirteen (13) east, and containing one thousand one hundred and sixty-six acres, more or less, and being the same purchased by the said James Railey from Lucien J. Polk by act of conveyance bearing date December 16th, 1854, and of record
630 in said Carroll parish, in the recorder's office thereof, in Book "H," pages 222 and 223, together with all the improvements, rights, privileges, easements, ways, and appurtenances therein and thereto belonging; also the following negro slaves employed upon and belonging to said land and plantation, being one hundred and thirty-six in number, together with any and all future increase thereof, and also any and all children thereof not herein specially named, to wit:

1. Obed.	23. Hollace.	45. Aleck.	67. Affy.
2. Lewis W.	24. Jeff M.	46. Salomon.	68. Phœbe.
3. Matt P.	25. Grandison.	47. L. Willis.	69. Lucy L.
4. Jack R.	26. Reuben.	48. Jim L.	70. Acky.
5. Israel.	27. Albert.	49. Carey.	71. Lidia.
6. Nelson B.	28. Hampton.	50. Loyd.	72. Saby.
7. Peter.	29. H. Jackson.	51. Edmond.	73. Fanny.
8. Tucker.	30. Robert.	52. Ernest.	74. Hester.
9. Lem.	31. Tom.	53. Matt L.	75. Harriett.
10. Norris.	32. Joe.	54. Washington.	76. Viney.
11. Pompey.	33. William.	55. Charles.	77. Betsy R.
12. Will T.	34. Winston.	56. L. Alfred.	78. Abby.
13. Willis.	35. Nelson L	57. L. Jim.	79. Paulina.
14. Jeff W.	36. Milton.	58. Henry.	80. Angeline.
15. Dause.	37. Suncon.	59. Stephen.	81. Catherine.
16. Lucas.	38. Charlie.	60. Lewis N.	82. E. Wall.
17. Harry W.	39. Anthony.	61. Johny.	83. Artemesia.
18. Isaac J.	40. Independence.	62. L. Edward.	84. P. Dennis.
19. Isham.	41. Moses.	63. Randolph.	85. Mary G.
20. Harris.	42. Dick.	64. Judy D.	86. Rosand.
21. Thompson.	43. Armstead.	65. Sophy.	87. Franky.
22. Moses D.	44. Jinney.	66. Chanty M.	88. C. Picket.

89. Martha B.	101. Cornelia.	113. L. Abby.	125. Letty.
90. S. Bruner.	102. Caroline.	114. Annis.	126. Rhody.
91. Eliza A.	103. Mary.	115. Lavinia.	127. L. Rhody.
92. H. Lucas.	104. Judy.	116. Beck W.	128. L. Margarett.
93. Rose T.	105. Peggy.	117. Sarah L.	129. Clarissa.
94. Betcy L.	106. Amenia.	118. Sylvia.	130. L. Sally.
95. L. Rachel.	107. Minerva.	119. Margarett.	131. L. Sarah.
96. Georgian.	108. Beck.	120. Viney L.	132. L. Louise.
97. Maria.	109. Charlott.	121. Tennessee.	133. Polly.
98. Chaney.	110. Emily.	122. Tilda.	134. L. Letitia.
99. Patunco H.	111. Nelly.	123. L. Judy.	135. Mary E.
100. Lizzie.	112. Becky.	124. Sally Ann.	136. Eugenia.

Said slaves being one hundred and thirty-six in number, sixty-three of them males, whereof twenty-seven, to wit, from and including Obed (No. 1) to and including Albert (No. 27), are grown men, and nine, to wit, from and including Hampton (No. 28) to and including Milton (No. 36), are boys above twelve years old, and the residue of said males children under twelve years of age, and seventy-three females, whereof forty-four are women & girls over the age of twelve years, to wit, from and including Judy D. (No. 64) to and including Minerva (No. 107), and the residue of said females girls & children under the age of twelve years; all which property, lands, and slaves the said James Railey delares and says are his own property, free from all claims, lien, or incumberance; that he has good right and authority to convey and mortgage the same; that said slaves are slaves for life, and that said lands he warrants unto the said Davis and assigns against the claims of all per-
632 sons whatsoever, and hereby binds himself not to alienate, remove, deteriorate, or in any — waste or encumber said property or any part thereof to the prejudice of this mortgage during its continuance.

And now to these presents personally came and intervened the said Mistress Matilda S. Green, wife of the said James Railey, and by him duly authorized and assisted herein, who declared that she has taken full cognizance of all that is hereinbefore written & contained, and that it is her wish & intention to renounce unto and in favor of the said G. Malin Davis & his assigns all rights of mortgage she has upon the above described and mortgaged property & every part thereof.

Whereupon I, the said recorder & *ex officio* notary public, did inform the said Matilda S., verbally, apart from and out of the hearing of her busband, that by the laws of this State a married woman has a legal mortgage upon all the property of her husband in this State and on the community of acquit's & gains as follows, to wit: 1st, for the restitution of her dowery and for the reinvestment of her dotal property sold by her husband and which she brought in marriage, reckoning from the celebration of the marriage; 2nd, for the restitution or reinvestment of dotal property which came to her after marriage, either by succession or donation, from the day the succession was opened or the donation was perfected, and, 3rd, to reimburse her in the price of the paraphernal property alienated by her

and received by her husband or otherwise disposed of for his individual interest, and that by renouncing, as she proposed to
633 do, she would forever deprive herself of all recourse upon said property by reason of her said mortgage; nevertheless she, the said Matilda S., declaring that she was fully acquainted with her said rights and the effects of her renunciation thereof, still persisted in her intention to renounce them, and with the aut-orization & assistance of her said husband she does hereby formally & expressly renounce unto and in favor of the said G. Malin Davis & his assigns all her rights of mortgage as aforesaid, & binds herself & her heirs at all times to recognize & sustain the validity of this renunciation.

And thereupon personally came and appeared, as before mentioned, the said G. Malin Davis & declared that, relying upon and being satisfied with the assurance of the said James Railey that said lands & slaves were free from all mortgage or encumberanse, he accepts this act with all its clauses and conditions and according to its true meaning & intent, and dispenses with the production of any certificate as to freedom from incumberanse, & releases me, the said recorder, from all liability therefor.

In testimony whereof the said James Railey & Matilda Green, his wife, and the said G. Malin Davis have signed this act on the day, year, and month first above written, in presence of John Janny & James H. Veazie, two competent witnesses, who have signed
634 thereto as such witnesses in my presence and at my office, in the town of Vidalia, in the parish and State first aforesaid, all erasures & interlineations made before signing.

(Sig'd) J. RAILEY.
(Sig'd) M. S. RAILEY.
(Sig'd) G. MALIN DAVIS.

Attest: JAS. H. VEAZIE.
J. JANNY.

(Sig'd) GRANVILLE W. WILLIAMS, *Recorder.*

STATE OF LOUISIANA, *Parish of Concordia:*

I certify the above to be a true copy of the original on file in my office.

Witness my hand and official seal, at Vidalia, this the 6th day of April, A. D. 1859.

(Sig'd) GRANVILLE W. WILLIAMS, *Recorder.*

The within mortgage and the notes therein described we acknowledge due & unpaid (credits excepted) and unsatisfied, and confirm the same.

June 3rd, 1865.

(Sig'd) H. O. RAILEY.
(Sig'd) C. RANDOLPH RAILEY.
(Sig'd) E. M. L. RAILEY.
(Sig'd) M. E. R. BOYD.
(Sig'd) F. W. BOYD.
(Sig'd) M. S. RAILEY,
Per M. E. R. BOYD (*as Ag't*).

38—113

DEC. 8TH, 1865.

635 The within mortgage and notes therein described presented to me as administrator for payment, and knowing the same to be correct and unpaid (credits excepted), I have no objection thereto in due course and according to their rank.

(Sig'd) F. W. BOYD,
Dat. Test. Adm'r.

(Endorsed:) James Railey and wife to G. Malin Davis. Mortgage. Filed April 23d, 1860. (Sig'd) J. W. Draughon, recorder.

Ac. J. S. and R. E. Neal.

JEFFERSON FOUNDRY,
MADISON, IND., 1860.

Estate of Mr. James Railey, Deceased,

Bought of J. S. and R. E. Neal, on High, Vine, Second, and Elm Str's, builders of steamboats & land engines, manufacturers of all kinds of iron and brass castings and machinery, babbitt mental, metal'ic packing, &c.

1860.			
Aug. 23.	To 1 9-inch engine, complete—boiler 40 in. by 26 feet—chimney, shafting & pulleys complete for 4 gin stands, delivered and set up	$2,560	00
	1 cast plate for chimney, 100 lb, 5c.	5	00
	1 idler pulley	33	00
636	Extra fr't, as per agreement	75	00
Sept. 21.	1 4 cold chisels, $1	4	00
	" 1 chipping hammer	1	25
	" 1 monkey wrench	1	50
	" 1 steam *guage*	25	00
	" 1 sheet-iron fire-door	12	00
		$2,716	75

Interest to be added from Oct'r 1st, 1860.

Endorsed:

Affidavit.

STATE OF INDIANA, *Jefferson County:*

Be it remembered that on this 24th day of December, A, D. 1860, personally appeared before me, the undersigned, a notary public in and for said county, Thomas Maddox, who, being by me first duly sworn, on his oath says that the items in the within account are just and due, and that the amounts appended to said items are the regular charges for said articles; that the within-named machinery was delivered to, and put up for, the said James Railey, deceased, and that the said account remains wholly unpaid; that he was the

agent for said J. S. & R. E. Neal and put up said machinery for said James Railey.

(Sig'd) THOS. MADDOX.

Subscribed & sworn to the 24th of December, 1860, before me, as witness my hand and seal notarial.

(Sig'd) A. D. MATTHEWS, *Not. Pub.*

I recognize this as a just claim against the estate of James Railey, to be paid in the course of the administration.

April 17th, 1861.

J. G. CARSON, *Ex'r.*

637 *Note to J. H. D. Bowmar.*

$15,000,00. PARISH OF CARROLL, LOUISIANA, *Feb'y 22nd*, 1858.

On the fifteenth day of January, eighteen hundred & sixty-two (1862), I promise to pay to Joseph H. D. Bowmar, or order, fifteen thousand dollars, with interest at the rate of eight per cent. per annum from maturity till paid, for value received.

(Sig'd) J. RAILEY.

Endorsed on back: Pay August Belmont & Co., or order. J. H. D. Bowmar. No. 11167. 6 district court. Filed March 5th, 1864. C. H. Lehman, d'y clerk. No. 11167. 6 dist. court. Filed May 7th, 1864. Easp. James, clerk.

I acknowledge the note of which the within is a copy to be a true & just claim against the succession of James Railey, dec'd, and promise to pay the same in due course of administration.

(Sig'd) W. F. BOYD, *Dat. Test. Ex'r.*

By reason of the above acknowledgement it is ordered that this claim be ranked among the acknowledged debts of the estate of James Railey.

(Sig'd) E. D. FARRAR, *Judge 13th District.*

638 *Order for Curator Ad Hoc.*

District Court, Parish of Carroll.

CREDITORS OF RAILEY *vs.* SUC. JAMES RAILEY. } 5104.

It being made to appear that the said succession of Railey is vacant and unrepresented, and all the heirs being non-residents, and the district judge being absent from the parish at this time, it is ordered that H. W. Drake be appointed *curator ad hoc* in this case.

(Sig'd) C. A. DE FRANCE, *Parish Judge.*

Judgment & Order of Sale of Property.

District Court, Parish of Carroll.

CREDITORS
vs.
SUCCESSION OF JAMES RAILEY. } 5104.

By reason of the law and the evidence being in favor of petitioners, respectively, and of a default taken & not set aside, it is ordered, adjudged, & decreed that the plaintiffs have judgment; that a writ issue to the sheriff to sell so much of the property mentioned in the inventory in due course of law as will be necessary to pay plaintiffs' demands & interest; that the property mortgaged to G. Malin Davis, as set out in petition & in an act passed before G. W. Williams, recorder of the parish of Concordia, on 30th March, 1859, and annexed to petition, be specially seized and sold in due course of law in order to pay said G. Malin Davis, for use of Mrs. Elizabeth S. Davis, the sum
639 of twenty-nine thousand dollars, with ten per cent. per annum interest of fifteen thousand dollars from 30th March, 1860, subject to a credit on the 7th of April, 1860, for the interest due up to March 30, 1861, and also in order to pay for use aforesaid fourteen thousand dollars, with ten per cent. per annum interest from the 30 March, 1861; that his right of mortgage aforesaid be recognized against the proceeds of the sale of said mortgaged premises to date from 30th March, 1859.

It is further ordered, adjudged, & decreed that the property mortgaged on the 22nd of February, 1858, to J. H. D. Bowmar by act of mortgage passed before Eli Harris, duly subrogated and transferred to August Belmont, mentioned in petition & the act of mortgage annexed, be specially seized & sold in due course of law in order to pay said Auguste Belmont the sum of fifteen thousand dollars, with 8 % per annum interest from the 15th of January, 1862; that right of mortgage held by said Belmont as aforesaid be recognized against the proceeds of the sale of the property so mortgaged, to date from 22nd February, 1859, & to be paid by priority out of the proceeds aforesaid according to the rank of his said mortgage; that if any surplus should remain after paying the said two mortgages claims the same shall be applied to the payment of the ordinary creditors mentioned in petition *pro rata;* that a writ issue to the sheriff
640 to sell any other property of said succession to a sufficient am't to pay what may be due said ordinary creditors, their demands & interest, mentioned in petition; that defendants pay costs of the proceedings.

Read and signed in open court this 13th October, 1866.

(Sig'd) E. D. FARRAR,
Judge Thirteenth District.

Fi. Fa.

STATE OF LOUISIANA, *Parish of Carroll:*

13th Dist. Court.

CREDITORS
vs.
SUCCESSION OF JAMES RAILEY. } 5104.

The State of Louisiana and said court to the sheriff of the parish of Carroll, Greeting:

We command you that by seizure and sale of the property, real and personal, rights, & credits of the estate of James Railey in the manner prescribed by law you cause to be made the sum of twenty-nine thousand dollars, with 10% interest on fifteen thousand dollars thereof from the 30th March, 1860, and like interest on the balance thereof, fourteen thousand dollars, from 30th March, 1861, said sum being due G. Malin Davis, and that you make the further sum of fifteen thousand dollars, with 8% interest from 15th January, 1862, am't due Auguste Belmont, together with — dollars, clerk's fees & your own fees, and that you seize and sell to pay the first of
641 said debts the plantation known as Carondalett, bounded on the east by lands of Wm. Henderson & J. B. Beard; on the north by lands of J. B. Beard & estate of Jonathan Morgan; on south by lands of Wm. Henderson & John Denson, & on the west by lands of Bowmar & Newman, all in T. 19, R. 13 east, containing 1,160 acres, more or less, situated in said parish and State, together with the improvements thereon, and that you seize and sell the following-described land belonging to said estate in order to pay the debt of said Auguste Belmont, to wit: That tract of land known as the Bowmar tract, situated on the west bank of the Mississippi river, bounded on the east by estate of Jonathan Morgan; south by lands of J. B. Beard and Wm. Henderson; on the west by the Railey plantation, all in T. 19, R. 13 E., 640 acres; and after satisfying said debts & costs of suit out of the proceeds of the sale of said lands — there should be any balance in your hands, then that a *pro rata* distribution of said overplus be made between the ordinary creditors in this suit to satisfy a judgment lately rendered in our district court in favor of the creditors of James Railey against the succession of James Railey, and of how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the Hon. E. D. Farrar, judge of said court, & the seal of said court this 20th day of Dec., A. D. 1866.

[SEAL.] (Sig'd) J. L. CHEATHAM,
Clerk of s'd Court.

642 *Sheriff's Return.*

Received, Floyd, Carroll parish, Louisiana, December the 20th, A. D. 1866, the within writ of "*fieri facias*," and on the same day, month, and year I seized the property described in the within writ, notice of which seizure I served by handing the same to James Erwin,

a free white person above the age of 14 years, at and residing at the residence of F. W. Boyd, ex'r, on the Front Railey plantation, in the parish of Carroll, said Boyd being absent from home at the time of such service, said service being made on the 24th day of December, A. D. 1866, and on the 29th day of the same month and year I advertised said property for sale in the "Carroll Record," a newspaper published weekly in the town of Lake Providence, in said parish & State, to be sold at the door of the court-house in the town of Floyd, in said parish & State, on the 1st Saturday, the 12th day, of February, 1867, at 11 o'clock a. m., for cash, with the benefit of appraisement, and on said day, at the place and hour aforesaid, the def't having failed to appear and select an appraiser, I selected Henry M. Shaw, a resident of said parish, and the attorney, & for the creditors selected John W. Dunn as the other appraiser, whereupon they appraised the plantation herein described as the "Carondelet" plantation (the other property having been released from seizure by order of plaintiff's attorney on the day of sale, to wit: All that property described as the Bowmar tract, containing 640 acres, as described in the within writ), containing 1,160 acres, at $39.00 per acre, amounting to $45,240.00,
643 and on said day of sale, at the hour aforesaid, I offered said Carondelet plantation for sale at public auction to the highest bidder; whereupon G. Malin Davis, by his attorney, John W. Montgomery, became the purchaser thereof for the total price and sum of forty-five thousand two hundred and forty dollars, that being the full amount of the appraisement value thereof, which amount, less $324.50, costs of this suit, was retained by the said G. Malin Davis in his hands as part satisfaction of this execution. This execution is therefore returned satisfied for 44,915.50 dollars.

(Sig'd) W. W. COLLINS, *Sheriff*,
By J. W. DRAUGHAN,
D'y Sheriff.

Endorsed on back: 5104. Creditors of Railey *vs.* Succession James Railey. *Fi fa.* Davis debt, 29,000; int. —. Belmont debt, 15,000; int. —.

Clerk's fees	$20 30
T. D. McCandless, recorder	5 00
Internal revenue	45 50
E. J. Delany, printer	20 00
Sheriff Collins	233 70
Total	$324 50

Returned & filed Feb'y 2, '67. R. J. London, D. C.

644 Thirteenth District Court.

CREDITORS OF JAMES RAILEY
vs.
ESTATE OF JAMES RAILEY. } 5104.

TUESDAY, *Oct. 2nd*, 1866.

Default.

CREDITORS OF JAMES RAILEY
vs.
SUCCESSION OF JAMES RAILEY. } 5104.

FRIDAY, *Oct. 12th*, 1866.

Judgment for plaintiffs.

A true and correct copy of the entrees on the minutes of the 13th district court in and for the parish of Carroll, State of Louisiana, at the respective dates as indicated above.

Witness my hand and the seal of the 8th dist. court, this 26th day of July, A. D. 1882.

[SEAL.] (Sig'd) GEO. J. HOOK, *D'y Clerk.*

Clerk's Certificate.

STATE OF LOUISIANA, *Parish of East Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the foregoing thirty pages contain a true & correct copy of all the papers and documents filed, orders of court, and proceedings had and judgment rendered and "*fiere facias*" and return of sheriff thereon, in suit numbered 5104 on the docket of the late 13th district court, styled Creditors of Railey *vs.* Succession of James Railey.

645 Witness my hand and the seal of said court this 26th day of July, 1882.

(Sig'd) F. H. G. TAYLOR, *D'y Cl'k.*

EXHIBIT "O." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant July 26th, 1882. Filed July 26th, 1882.

Endorsed: Succession of James Railey, dec'd. Certified copy of papers in the matter of the administration of Sterling T. Austin.

Petition.

To the honorable judge of the parish court for the parish of Carroll, State of Louisiana:

The petition of Sterling T. Austin, a resident of the aforesaid parish and State, respectfully represents that the succession of James Railey is vacant and unrepresented; that in 1860 the said James Railey departed this life in this parish, leaving a large estate located in this parish; that after his death James G. Carson became testamentary executor of his last will and testament and served in said capacity until he died, in 1863; that subsequently one F. W. Boyd was appointed dative testamentary executor, but — removed from office by order of court July 16th, 1868. C. R. Egelly then took letters of administration, and after partially administering

646 the estate and selling out large and valuable property belonging to it in a hurried manner and at a ruinous sacrifice said Egelly retired from said administration, and was discharged May

10th, A. D. 1869, since which time the said succession has remained unrepresented.

He shows that there — debts of said succession yet unpaid, and that there are some effects left to it, to wit: Some claims against the United States Government and against others; that this petition- represents two of the beneficiary heirs to said succession, who are of age, to wit, H. O. Railey, son of said deceased, and the widow of C. R. Railey, another son being agent for them.

He also represents some of the creditors, and is hence entitled to administer said succession; shows that the effects will not be appraised at more than five hundred dollars.

That as the succession it now so small it should be summarily administered and its affairs settled at small costs.

Wherefore he prays the court to appoint him dative testamentary executor of said succession in a summary manner on his complying with the law.

That an inventory be taken of the effects, and for general relief.

(Sig'd) ROBERTS & NEWMAN.

Affidavit.

Personally appeared before the undersigned authority Sterling T. Austin, who on oath declared that the allegations of the fore-
647 going petition and the facts therein set forth are true to the best of his knowledge & belief.

(Sig'd) S. T. AUSTIN.

Sworn to and subscribed before me this 23d day of M'ch, 1875.

(Sig'd) C. E. MOSS,
Parish Judge.

Order.

By reason of the law and evidence being in favor of this applicant, and on his affidavit to the truth of the allegations, and on their being bourne out by the records of said succession, it is hereby ordered that Sterling T. Austin be appointed dative testamentary executor of the succession of James Railey, deceased, on his giving bond for ¼ over and above the amount of the inventory.

That a commission issue to a notary public or other officer to take an inventory of said estate.

Done, read, & signed, at chambers, this 23d day of March, A. D. 1875.

(Sig'd) C. E. MOSS,
Parish Judge.

(Endorsed:) Filed M'ch 23d, 1875. (Sig'd) T. J. Galbreth, deputy clerk.

Inventory.

648 STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that in pursuance of an order to me issued by the honorable probate court in and for the parish of Car-

roll and State of Louisiana, and of a commission issued by David Jackson, clerk of said court, and to me directed, authorizing and requiring me to take an inventory and cause an appraisement to be made of all the property, effects, rights, and credits belonging to the succession of the late James Railey, deceased, which may be found in our said parish, &c., I, M. A. Sweet, recorder in & for said parish and State, proceeded to execute said order by appointing M. Shelby Powell and James S. Milliken to act as appraisers, to whom I administered the following oaths, to wit:

We do, each of us, solemnly swear that we will well & truly appraise & the true cost value place upon all the property, effects, rights, & credits belonging to the succession of the late James Railey, deceased, which may be submitted to us for our decision, to the best of our ability & understanding. so help us God.

(Sig'd) M. S. POWELL.
(Sig'd) JAS. S. MILLIKIN.

Sworn to & subscribed before me this 23d day of March, A. D. 1875.
(Sig'd) M. A. SWEET,
Recorder & ex Officio Notary Public.

649 We then proceeded to make the following inventory and appraisement:

Item 1st. Contingent claim against the United States Government for the am't of six thousand dollars, more or less, appraised & valued at ---------- $150 00
Item 2nd. Claim against F. W. Boyd for the am't of—not known—appraised & valued at ---------- 150 00

Recapitulation.

Item 1st. Appraised & valued at ---------- 150 00
" 2d. " " " " ---------- 150 00

Total appraisement ---------- $300 00

STATE OF LOUISIANA, *Carroll Parish:*

M'CH 23D, A. D. 1875.

Thus done, inventoried, and appraised at one sitting, without turning aside to other business, under an order from T. J. Galbreth, deputy clerk of the 13th district court in and for the said parish & State, & in the presence of the subscribing witnesses.

(Sig'd) M. S. POWELL.
(Sig'd) JAS. S. MILLIKEN.

Attest: THAD. SMITH.
J. E. MUNCY.

(Sig'd) M. A. SWEET, *Recorder.*

Endorsed: Filed M'ch 23d, 1875. T. J. Galbreth, deputy clerk.

650 *Bond.*

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

Know all men by these presents that we, S. T. Austin, as principal, and J. E. Leonard, as security, both of said parish and State, are held and firmly bound unto C. E. Moss, Jr., judge of said court in and for said parish & State, & his successors in office, in the sum of four hundred dollars, lawful money of the United States of America; for the payment of which we bind ourselves, our heirs and legal representatives, firmly by these presents this the 23d day of March, A. D. 1875.

The conditions of the above obligation is this: That whereas the above-bound S. T. Austin has this day been appointed by our said court as dative test. executor of the property, rights, and credits of the said James Railey, deceased:

Now, if the above-bound S. T. Austin shall well and truly administer the property and effects of the said James Railey, dec'd, and a true and correct account thereof render to our said court in the time and manner pointed out by the statutes of this State and the said account shall be duly approved and homologated by our said court, then the above obligation to be null and void; otherwise to remain in full force and effect.

(Sig'd) S. T. AUSTIN.
(Sig'd) J. E. LEONARD.

(Endorsed:) Filed Mc'h 23d, 1875. T. J. Galbreth, d'p'y cl'k.

651 *Oath.*

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

I, Sterling T. Austin, do solemnly swear that I will faithfully perform and discharge the duties incumbent upon me as dative testamentary executor of the succession of the late James Railey, deceased, according to the best of my ability and understanding, so help me God.

(Sig'd) STERLING T. AUSTIN.

Sworn to and subscribed before me this 23d day of March, A. D. 1875.

T. J. GALBRETH, *D'p'y Cl'k.*

(Endorsed:) Filed M'ch 23, 1885. T. J. Galbreth, d'p'y cl'k.

Letters.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

Be it remembered that whereas Sterling T. Austin has been ap-

pointed dative testamentary executor of the succession of the late James Railey, deceased, and having given bond and security and taken the oath required by law is therefore fully authorized and empowered to perform and discharge the duties of said appointment.

Witness the Hon. C. E. Moss, Jr., judge of said court, and the seal of said court, this the 23rd day of March, A. D. 1875.

[SEAL.] (Sig'd) T. J. GALBRETH, *D'p'y Cl'k.*

(Endorsed:) Filed M'ch 23d, 1875. T. J. Galbreth, d'p'y cl'k.

652 *Petition and Order for Another Inventory.*

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

SUCCESSION OF JAMES RAILEY, Deceased.

The petition of Sterling T. Austin, dative testamentary executor of the succession of James Railey, dec'd, with respect, shows—

That the property of said succession is more valuable than it was thought to be at the time of his appointment, and prays the court to order another inventory to be taken of the property of said succession.

(Sig'd) STERLING T. AUSTIN, *Pro. Per.*

Upon reading and considering the foregoing petition let an inventory be taken of the property of the succession of James Railey, dec'd.

Thus done & signed in chambers this 31st day of May, A. D. 1875.

(Sig'd) C. E. MOSS, JR.,
Parish Judge.

(Endorsed:) Filed June 1st, 1875. T. J. Galbreth, d'p'ty cl'k.

Inventory.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that, in pursuance of an order to me issued by the hon. probate court in & for the parish of Carroll and State of Louisiana, & of a commission issued by T. J. Galbreth, d'y cl'k of said court, and to me directed, authorizing & requiring me to take an inventory & cause an appraisement to be made
653 of all the property, effects, rights, and credits belonging to the succession of the late James Railey, deceased, which may parish be found in our said—

I, W. T. Smith, d'y recorder in & for said parish & State, proceeded to execute said order by appointing George P. Labarre and Charles Hicks to act as appraisers, to whom I administered the following oaths, to wit:

We do, each of us, solemnly swear that we will well and truly appraise & the true cash value place upon all the property, effects, rights, and credits belonging to the succession of the late James

Railey, deceased, which may be submitted to us for our decision, to the best of our ability & understanding, so help us God.

(Sig'd) GEORGE P. LABARRE.
(Sig'd) CHARLES HICKS.

Sworn to & subscribed before me this 1st day of June, 1875.

W. T. SMITH,
D'y Recorder.

We then proceeded to make the following inventory and appraisement:

Contingent claim against the United States Government for the amount of six thousand dollars, more or less, appraised & valued at four thousand dollars.

Thus done, inventoried, and appraised at one sitting, without turning aside to other business, in presence of the subscribing witnesses, this 1st day of June, 1875.

GEORGE P. LABARRE.
CHARLES HICKS.

Attest: CHARLES DONALLY.
R. W. LACKEY.

W. T. SMITH,
D'p'y Recorder.

654 (Endorsed:) Filed June 1st, 1875. T. J. Galbreth, d'p'ty clerk.

Alias Bond.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

Know all men by these presents that we, Sterling T. Austin, as principal, and F. M. Hoppin, as security, both of said parish and State, are held and firmly bound unto Charles E. Moss, Jr., judge of said court in & for said parish and State, and his successors in office, in the sum of six thousand dollars, lawful money of the United States of America; for the payment of which we bind ourselves, our heirs and legal representatives, firmly by these presents this the 1st day of June, A. D. 1875.

The condition of the above obligation is this: That whereas the above-bound Austin has been appointed by our said court as dative testamentary executor of the property, rights, and credits of the said succession of James Railey, dec'd:

Now, if the above-bound Sterling T. Austin shall well & truly administer the property and effects of the said succession of James Railey, and a true and correct account thereof render to our said court in the time & manner pointed out by the statutes of this State, and the said account shall de duly proved and homologated by our said court, then the above obligation to be null & void; otherwise to remain in full force and effect.

(Sig'd) STERLING T. AUSTIN.
" F. M. HOPPIN.

Approved:
C. E. MOSS, JR., *Parish Judge.*

655 (Endorsed:) Filed June 1st, 1875. T. J. Galbreth, d'p'ty clerk.

Cl'k's Certificate.

STATE OF LOUISIANA, *Parish of East Carroll:*

THE CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the foregoing ten (10) pages contain a true and correct copy of all the papers on file in this office in the matter of the dative executorship of Sterling T. Austin of the succession of the late James Railey, deceased.

Given under my hand and the seal of said court this 20th day of March, 1882.

(Sig'd) F. H. G. TAYLOR, *D'y Clerk.*

EXHIBIT "P." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants July 26th, 1882. Filed July 26th, 1882.

Endorsed: Deed. Succession James Railey to William G. Wyly 1868.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it know- that this day, before me, Thomas D. McCandless, recorder in and for the parish and State aforesaid, duly com-
656 missioned and qualified, and in presence of the witness- hereafter named and undersigned, personally came and appeared Charles R. Egelly, administrator of the estate of James Railey, deceased, who declares that on the 17th day of Sept., A. D. 1868, the parish judge of said parish granted an order and decree for the sale of the Raleigh plantation, property of said succession hereinafter described; that by virtue of said order and decree he did advertise the said property for sale at the door of the court-house in the town of Floyd, in said parish and State, for cash, which advertisement was inserted in the "Carroll Record," a newspaper published weekly in said parish, on the 18th of Sept., A. D. 1868, notifying the public that such sale would take place on the 20th day of October, A. D. 1868, at the place aforesaid, a copy of which notice is hereto annexed for reference.

And on the day of sale aforesaid he presented at the door of the court-house in the town of Floyd after reading the advertisement of sale to offer said plantation for sale in an audible voice at public auction.

Whereupon William G. Wyly bid for said property the sum of one $\frac{50}{100}$ dollars ($1.50) per acre, that being the full inventoried value of said land, and this being the last and highest bidder, which amount being twenty-five hundred & thirty-three & $\frac{05}{100}$ (2,533.05)
657 dollars, and which amount he paid in cash, the receipt of which is hereby acknowledged by said administrator.

Therefore, in consideration of the premises, he, the said administrator, declared that he does hereby sell and adjudicate unto the said

William G. Wyly the said Raleigh plantation, situated in this parish about sixteen (16) miles below the town of Lake Providence, bounded in front by the Mississippi river, in the rear by lands of I. B. Beard, on the left or above by the lands of T. W. Lilly or Salem plantation, and on the lower side by lands of the succession of Jonathan Morgan, deceased, containing about sixteen hundred & eighty (1,680) acres, more or less:

To have and to hold the said described property, together with all the buildings & improvements thereunto belonging, unto the said purchaser for his own proper use, benefits, and behoofs and that of his heirs and assigns forever, and the said William G. Wyly being present declared that he does hereby accept this deed for himself, his heirs and assigns.

Thus done & passed, at my office in the town of Floyd, in said parish and State, in presence of Daniel S. Vinsen and James G. Wyly, lawful witnesses, who thereto sign their names with said C. R. Egelly, administrator, & W. G. Wyly and me, recorder, on this 20th day of the month of October, A. D. 1868.

CHAS. R. EGELLY, *Adm'r.*
W. G. WYLY.

Attest: D. S. VINSEN.
JAS. G. WYLY.

T. D. McCANDLESS, *Recorder.*

658 A true copy of the original act on file & of record in this office.

Witness my hand & seal this 17th July, 1882.

(Sig'd) GEO. J. HOOK,
D'y Recorder.

659 EXHIBIT "Q." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainant July 26th, 1882. Filed July 26th, 1882.

To the hon. judge of the district court in & for the parish of Carroll, State of Louisiana:

The petition of J. W. Montgomery, of your said parish, represents—

That Auguste Belmont, who resides in the State and city of New York, is indebted unto your petitioner in the sum of eleven hundred & fourteen dollars for this: That the law firm composed of your petitioner & Edward Sparrow, & practicing their profession under the style of Sparrow & Montgomery, performed valuable services to & for said Belmont in your said court, which services consisted in legal proceedings instituted by said firm for said defendant on a promissory note made by James Railey for $5,000.00, bearing 8% per annum interest from 1 January, 1862, & for recovering judgment thereon for a sale of property, & which will fully appear by reference to the suit styled Criditors of Railey *vs.* Succession of Railey, in your said court, & mentioned on the docket as 5104; that said services were well worth the sum of eleven hundred &

ten dollars, being 5% commission on the judgment & interest up to Jan'y 15, 1868; that defendant is indebted for the balance of said sum first mentioned, being four dollars paid by your said attor-
660 neys for the reinscription of the mortgage held by said defendant against the property of said succession; that said indebtedness is still due and unpaid; that said Edward Sparrow has assigned & transferred to petitioner all his interest in said demand, of which petitioner is now sole owner; that, by the law of the State of Lousiana, attorneys-at-law are entitled to a lien & privilege on all judgments they recover for litigants in courts of justice; that although said Belmont is a non-resident he has effects in this parish.

Wherefore petitioner prays that an attorney or "*curator ad hoc*" may be appointed to represent the above defendant; that a writ of attachment may issue against the property, rights, & credits of said defendant, & that after due proceedings petitioner may have judgment against said Belmont for said sum of money & interest from 15th day of January, 1868; that he be decreed to have lien & privilege on the judgment first herein mentioned; that he be also decreed to have a lien & privilege of attachment against the property attached in this case, & that said property be sold in due course of law in order to pay said demands & interest, & for costs & general relief, &c.

(Sig'd) J. W. MONTGOMERY, *in D. C.*

661 *Affidavit.*

J. W. Montgomery, being sworn, says all the facts set forth in this petition are true & correct, & that the judge of this district is at this time absent from the parish.

(Sig'd) J. W. MONTGOMERY.

Sworn to and subscribed before me this 17th day of October, 1868.

GEORGE C. BENHAM, *P. Judge.*

Order.

The foregoing petition and affidavit being considered, let a writ of attachment issue as prayed for upon pl't'ff's giving bond & security, as required by law, & let F. F. Montgomery, att'y-at-law, be appointed "*curator ad hoc*" to represent the absent defendant.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

I accept the above appointment of "*curator ad hoc.*"

F. F. MONTGOMERY,
Att'y-at-Law.

In this case, by reason of the law and the evidence being in favor of the plaintiff and against the defendant, & by further reason of a judgment by default being entered up against defendant & the legal days having expired without any answer being made, & the plaintiff having fully sustained by proof, it is ordered, adjudged, and decreed that plaintiff have judgment for eleven hundred & ten dollars

against the defendant, with 5% per annum interest from Jan'y 15th, 1868, till paid.

662 It is further ordered, adjudged, and decreed to have a lien to recover said sum, & that his privilege of attachment be recognized and enforced against the property attached, to wit, a certain judgment of this court in favor of defendant against the estate of James Railey, dec'd, No. —, on the docket of this court as No. 5104, for $15,000.00 interest, with 8% interest from 15th Jan'y, 1862; that said judgment be specially seized & sold to pay the plaintiff's demand, and the proceeds thereof be applied by preference to the judgment of plaintiff's demand.

Read & signed in open court this 28th day of September, 1869.

(Sig'd) WADE H. HOUGH,
Judge 13th District.

Bond.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

J. W. MONTGOMERY
vs.
AUGUSTE BELMONT. } No. —.

Know all men by these — that we, J. W. Montgomery, as principal, and —— ——, both of said parish and State, are held and firmly bound unto August Belmont, the defendant in the above-styled case, in the sum of seventeen hundred & fifty-five dollars, lawful money of the United States of America, to be paid to the said Belmont's heirs, executors, administrators, and assigns; for which pay-

663 ment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, & assigns, firmly by these presents.

Sealed with our seal & dated 19th day of October, 1868.

Whereas plaintiff has this day presented a petition to the clerk of the thirteenth judicial district court of said parish & State praying that a writ of attachment issue against the property of the defendant: Now the condition of the above obligation is that the above-bound principal and surety will well and truly pay to the said defendant, the defendant in said suit, all such damages as he may recover against us in case it should be decided that the attachment was wrongfully obtained.

Signed & delivered in presence of—

J. W. MONTGOMERY. [L. S.]
W. G. WYLY. [L. S.]

Filed October 19th, 1868.

R. J. LONDON,
D'p'y Clerk.

Citation.

STATE OF LOUISIANA, *Parish of Carroll*:

13th District Court.

J. W. MONTGOMERY
vs.
AUGUSTE BELMONT. } No. 5735.

State of Louisiana & said court to August Belmont, residing in the State of New York, & to F. F. Montgomery, "*curator ad hoc*," residing in said parish and State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said J. W. Montgomery, a duly
664 certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of said court, held at Floyd, in said parish, within ten days after service hereof, according to law.

Witness the Honorable Wade H. Hough, judge of the said court, & the seal of the said court, this the 19th day of October, in the year of our Lord 1868.

J. L. CHEATHAM, *Clerk*,
(Sig'd) By R. J. LONDON, *D'p'y Cl'k.*

Delivered Oct. 19th, 1868.

STATE OF LOUISIANA, *Parish of Carroll*:

Thirteenth District Court.

J. W. MONTGOMERY
vs.
AUGUST BELMONT. } No. 5735.

The State of Louisiana and said court to August Belmont, residing out of the State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said J. W. Montgomery, a duly certified copy of which accompanies this citation, or deliver your answer to the said petition in writing in the office of the clerk of said court, held at Floyd, in said parish, within ten days after service hereof and according to law.

Witness the Honorable Wade H. Hough, judge of the said court, & and the seal of the said court, this 19th day of October, in the year of our Lord 1868.

J. L. CHEATHAM, *Clerk*,
(Sig'd) By R. J. LONDON, *D'y Cl'k.*

Delivered Oct. 19th, 1868.

665 *Writ of Attachment.*

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

J. W. MONTGOMERY
vs.
AUGUST BELMONT. } No. 5735.

The State of Louisiana & said court to the sheriff of the parish of Carroll, Greeting:

Whereas due proof has been made before the 13th judicial district court of the State of Louisiana, parish of Carroll, by J. W. Montgomery, that August Belmont is indebted to him in the full sum of eleven hundred and fourteen dollars, and that the said Belmont resides permanently out of the State of Louisiana:

Now, therefore, you are commanded in the name of the State of Louisiana and the thirteenth judicial district court of said State to seize and attach according to law and take into your possession the goods & chattels, lands, tenements, rights, & credits, of the said Belmont, if any you find in said parish, to the amount of what will suffice to discharge the said debt & costs of suit, & that you give notice of this proceeding by leaving a copy thereof at the last place of abode of said defendant, if in said parish, & causing a copy thereof to be affixed at the door of the court-house of said parish, and make return of this writ, and endorse thereon the manner in which you have executed it, before our said court, on or before the 1st Monday of December, in the year of our Lord 1868.

666 Witness the Honorable Wade H. Hough, judge of the said court, & the seal of the said court, this 19th day of October, in the year of our Lord 1868.

J. L. CHEATHAM, *Clerk,*
(Sig'd) By R. J. LONDON, *D'y C'lk.*

Returned & filed Oct. 19th, 1868.

Sheriff's Return.

Rec'd, Floyd, Carroll parish, Louisiana, Oct. the 19th, 1868, the within writ of attachment, and on the same day, month, & year seized and took in my possession a judgment in suit No. 5104, styled Creditors of James Railey *vs.* Succession of James Railey, amounting to $15,000.00, fifteen thousand dollars, and made the following inventory and appraisement thereof, to wit: Judgment in suit No. 5104 for $15,000; appraised at $200.00.

Done, attached, and inventoried in presence of T. D. McCandless & C. D. Benton, lawful witnesses, who hereto sign their names with me, the undersigned deputy sheriff.

GEO. A. SHERRIDAN, *Sheriff,*
By J. W. DRAUGHON,
D'p'ty Sheriff.

Attest: T. D. McCANDLESS.
C. D. BENTON.

Writ of Attachment.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

J. W. MONTGOMERY
vs.
AUGUST BELMONT. } No. 5735.

The State of Louisiana & said court to the sherriff of the parish of Carroll, Greeting:

Whereas due proof has been made before the 13th judicial
667 district court of the State of Louisiana, parish of Carroll, by J. W. Montgomery, that August Belmont is indebted unto him in the sum of eleven hundred & fourteen ($1,114.00) dollars, and that the said August Belmont resides permanently out of the State of Louisiana: Now, therefore, you are commanded in the name of the State of Louisiana & the thirteenth judicial district court of said State to seize and attach, according to law, & to take into your possession the goods & chattels, lands and tenements, rights and credits, of the said August Belmont, if any you find in said parish, to the amount of what will suffice to discharge the said debt & cost of suit, & that you give notice of this proceeding by leaving a copy thereof at the last place of abode of said defendant, if in said parish, & causing a copy thereof to be affixed at the door of the court-house of said parish & make return of this writ, and endorse thereon the manner in which you have executed it, before our said court, on or before the first Monday of December, in the year of our Lord 1868.

Witness the Honorable Wade H. Hough, judge of the said court, & the seal of said court, this 19th day of Oct., in the year of our Lord 1868.

[SEAL.] J. L. CHEATHAM, *Clerk*,
(Sig'd) By R. J. LONDON, *D'y Cl'k.*

Filed Oct. 20th, 1868.

Sheriff's Return.

668 Rec'd, Floyd, Carroll parish, Louisiana, Oct. 19th, A. D. 1868, the within writ of attachment, & on the 20th day of same month and year served the same by handing a certified copy hereof to Field F. Montgomery, "*curator ad hoc*," for the defendant, in person, in the town of Floyd, same parish and State.

GEO. A. SHERRIDAN, *Sheriff*,
(Sig'd) By H. G. BELDEN, *D'y Sheriff.*

Notice of Judgm't.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

J. W. MONTGOMERY
vs.
AUGUST BELMONT. } No. 5735.

The State of Louisiana & said court to August Belmont, residing in the city of New York, & to H. M. Drake, "*curator ad hoc*," residing in the aforesaid parish:

Take notice that on the 28th day of September, 1869, in said court, a final judgment was rendered against you in the above-entitled suit in favor of said J. W. Montgomery, by which you are condemned to pay the sum of eleven hundred & ten dollars & costs, with interest thereon at the rate of 5 % per annum from the 15th day of January, 1869, until paid, & cost of suit.

Witness the Honorable Wade H. Hough, judge of said court, & seal of said court, this 12th day of October, in the year of our Lord 1869.

R. K. ANDERSON,
Clerk of said Court,
By R. J. LONDON,
D'p'y Clerk.

Returned & filed Oct. 13th, 1869.

669 *Sheriff's Return.*

Rec'd, Floyd, Carroll parish, La., Oct. 12th, 1869, the within notice of judgment, together with a certified copy hereof, & on the 13th day of same month & year served said copy by handing the same to H. W. Drake, "*curator ad hoc*," for the defendant, in person, in the town of Floyd, in said parish and State.

(Sig'd) J. W. DRAUGHON, *Sheriff.*

Fi. Fa.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

J. W. MONTGOMERY
vs.
AUGUST BELMONT. } No. 5735.

The State of Louisiana & said court to the sherriff of the parish of Carroll, Greeting:

We command you that by seizure and sale of the property, real and personal, rights and credits of August Belmont in the manner prescribed by law you cause to be made the sum of eleven hundred & ten dollars, with 5% per annum interest thereon from the 15th day of January, 1868, together with $—, clerk's cost, & your own fees, & that you seize and sell all the right, title, and interest of

the defendant in and to a certain judgment on the docket of said court of this parish, No. 5104, styled the Creditors of Estate of James Railey *vs.* Succession of James Railey, amounting to fifteen thousand dollars, to satisfy a judgment lately rendered in our district court against the said August Belmont and in favor of said
670 J. W. Montgomery, and of how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the Honorable Wade H. Hough, judge of the said court, & the seal of the said court, this 20th day of October, in the year of our Lord 1869.

R. K. ANDERSON,
Clerk of said Court,
By R. J. LONDON, *D'y Cl'k.*

Returned & filed Nov. 6th, 1869.

R. J. LONDON, *D'y Cl'k.*

Sheriff's Return.

Rec'd, Floyd, Carroll parish, La., Oct. 20th, 1869, the within writ of sale, & on same day, month, and year seized the following-described property, to wit: All the right, title, and interest & claim of the said August Belmont in & to a certain judgment mentioned on the docket of the 13th district court, No. 5104, styled Creditors of the Estate of James Railey *vs.* Succession of James Railey, notice of which seizure I served by handing the same to H. W. Drake, *curator ad hoc*, for the defendant, in person, in town of Floyd, said parish & State, on the same day, month, & year. I advertised said judgment for sale in the "Elton Eagle," the official newspaper for said parish and State, published weekly in said parish and State, to be sold, at the door of court-house, in the town of Floyd, in said parish & State, on the first Saturday, the 6th day of Nov., A. D. 1870, for cash, with the benefit of appraisement, and on said day of sale, at the place aforesaid, after reading the advertisement of sale & having
671 said property duly appraised, I offered said judgment for sale in an audible voice at public auction; whereupon John W. Montgomery became the purchaser, as the highest & last bidder, for the price of six hundred & sixty-six & 66⅔-100 dollars, that being two-thirds of the appraised value of said judgment; whereupon I adjudicated said judgment to him, he retaining the amount of said bid, less the cost. Therefore this writ is returned as in part satisfied.

(Sig'd) J. W. DRAUGHON, *Sheriff.*

Montgomery's Assignment to W. G. Wyly of Judg't.

District Court, Parish of Carroll.

AUGUST BELMONT & *als.*
vs.
SUCCESSION JAMES RAILEY, Dec'd.

For value received I hereby transfer to Wm. G. Wyly the judg-

ment rendered in the above-entitled cause in favor of the plaintiff, & which I bought at sherriff sale in the suit of J. W. Montgomery *vs.* August Belmont in said court, hereby subrogating said Wyly to all my rights to said judgment & the mortgage recognized & ordered to be enforced in said judgment.

Nov. 9th, 1870.

J. W. MONTGOMERY.

U. S. stamps to the amount of ninety-five cents appear and are cancelled on the face of above transfer.

Filed Nov. 10th, 1870.

(Sig'd) R. J. LONDON, *D'y Clerk.*

672 It being suggested that F. F. Montgomery had left the parish & State since he was appointed *curator ad hoc*, the district judge being absent from the parish, this day it is ordered that W. H. Drake, att'y-at-law, be appointed *curator ad hoc* to represent the absentee in any process that may issue in this case.

Done this 17th day of Oct., 1869.

C. A. DE FRANCE,
Parish Judge.

I hereby certify that the above is a true copy as appears on the reverse side of petition of J. W. Montgomery *vs.* A. Belmont.

(Sig'd) F. H. G. TAYLOR,
D'y Cl'k 8th Dist. Court.

Filed Oct. 20th, 1868.

Rec'd, Floyd, Carroll parish, Louisiana, October 19th, A. D. 1868, the within citation, together with a certified copy hereof and a copy of plaintiffs' petition, and on 20th day of same month & year served said copies by handing the same to Field F. Montgomery, *curator ad hoc*, in person, in the town of Floyd, in said parish and State.

GEO. A. SHERRIDAN, *Sherriff,*
By A. G. BELDEN, *D'p'y Sherriff.*

Returned & filed Oct. 19th, 1868.

Rec'd, Floyd, Carroll parish, Louisiana, Oct. 19th, A. D. 1868, the within citation, together with a certified copy hereof, and on the same day, month, & year posted said copy at the door of the court-house in the town of Floyd, in said parish & State.

GEO. A. SHERRIDAN, *Sherriff,*
By J. W. DRAUGHON, *D'p'y Sherriff.*

Cl'k's Certificate.

I hereby certify that the above and foregoing is a true &
673 correct copy of the returns made on the reverse of citations in suit of J. W. Montgomery *vs.* August Belmont, No. 5735, on docket 13th district court.

(Sig'd) F. H. G. TAYLOR,
D'y Cl'k 8th District Court, Parish East Carroll, Louisiana.

Copy of Minutes of Court.

J. W. MONTGOMERY
vs.
AUGUST BELMONT. } No. 5735.

TUESDAY, *September* 21*st*, 1869.

Default.

J. W. MONTGOMERY
vs.
AUGUST BELMONT. } No. 5735.

MONDAY, *Sept.* 27*th*, 1869.

Judgment for pl't'ff.

I hereby certify that the foregoing is a true & correct copy of the entries on the minutes of the 13th district court in & for the parish of Carroll, La.

Witness my hand & seal of the 8th district court this 25th day of July, 1882.

(Sig'd) T. H. G. TAYLOR,
D'y Clerk 8th Dist. Court.

EXHIBIT "R." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainant July 26th, 1882. Filed July 26th, 1882.

674 STATE OF NEW YORK, *City and County of New York:*

Be it remembered that on this the 15th day of August, eighteen hundred & seventy, before me, Charles I. Bushnell, commissioner of the State of Louisiana, duly commissioned by the Governor thereof, for the city, county, and State of New York, and the two subscribing witnesses, personally came and appeared G. Malin Davis, of Natchez, Mississippi, but now present here, who declared that for and in consideration of the price hereinafter set forth he has sold, and does by these presents sell, transfer, and set over, unto John W. Montgomery, of Lake Providence, Louisiana, with full warranty of title and subrogation of all rights and actions against his vendors, the following-described lands, with all the buildings and improvements thereon and the improvements and appurtenances thereunto appertaining, to wit: That plantation and tract of land known and designated as "Carondalet plantation," situated in the parish of Carroll, Louisiana, and containing eleven hundred and sixty acres of land. and further designated by the surrounding lands as follows: Bounded on the east by lands of the late Wm. Henderson, now dec'd, and the lands of I. B. Beard & wife; on the north by lands of said Beard & wife and lands held by the estate of Jonathan Morgan; on the south by lands of said Wm. Henderson and John Denson, and on the west by lands formerly owned by Bowmar & Newman,
675 now composing part of the "Raleigh plantation" and now owned by Wm. G. Wyly, all in township nineteen north, range thirteen east, in the district of lands north of Red river.

This sale is made for and in consideration of the price of thirty-two thousand dollars, paid & to be paid as follows, to wit: Five thousand dollars thereof was paid on the 26th of February last past, and for the remaining part of the price the said purchaser has executed and signed four promissory notes to the order of G. Malin Davis, dated "Lake Providence, February 26th, 1870, stipulating 8 % per annum interest from the 1st day of January, 1871, payable respectively on the 1st of January, 1871, 1872, 1873, & 1874," the one first due being for the sum of five thousand dollars and the other three for seven thousand three hundred and thirty-three $\frac{33}{100}$ dollars each.

This sale is made with the understanding that the purchaser shall and will execute in favor of the vendor an authentic act of mortgage to secure the notes executed for the credit part of the price upon all the property hereby conveyed, and that the said purchaser also complies with all the stipulations contained in the written agreement signed by Mrs. Elizabeth S. Davis, as the agent of G. Malin Davis, of date 1st of March, 1870, a copy whereof is hereto annexed. Until such mortgage shall have been executed and the terms of the annexed agreement complied with this sale is not to be considered as complete. It is further stipulated that the property sold is not to be delivered until the first of January, 1871,
676 and until that time the vendor is to receive the rents.

This done and passed in the city of New York in presence of Albert I. Tobey and Willard Phelps, witnesses, who hereunto subscribe their names with G. Malin Davis, the said vendor, and me, commissioner, on the day and date first above written and to which I sign my name and affix my official seal. (The agreement herein referred to is, for further identity, marked "Alpha," at the top thereof by me, said commissioner, with my initials.)

(Sig'd) G. MALIN DAVIS.

Witness:

(Sig'd) ALBERT I. TOBEY.
(Sig'd) WILLARD PHELPS.

(Sig'd) CHARLES I. BUSHNELL,
Louisiana Commissioner in New York, N. Y. City.

STATE OF LOUISIANA, *Parish of Carroll:*

On this the 6th day of December, A. D. 1870, before me, S. D. Oliver, deputy recorder of said parish, and in presence of the two subscribing competent witnesses, personally came and appeared John W. Montgomery, of said parish, who declared that he has taken full cognizance of the foregoing deed and sale of the "Carondalet plantation" therein described made to him by G. Malin Davis, as per the foregoing act passed on 15th August, 1870, before Chas. I. Bushnell, commissioner of Louisiana in and for the city, county, and State of New York, and the said Montgomery declares
677 that he does by these presents accept the said sale and transfer in all its parts and clauses, and hereby acknowledges to

have executed, signed, and delivered the four promissory notes therein in said act described as therein stated, and hereby confesses to be indebted unto the said Davis in the full amount of said notes; and the said Montgomery further agrees that in the event of said Davis or any holder of said notes having to resort to justice for their collection he will pay the att'y's fees of such holder or holders, which are hereby fixed at five per cent. upon the amount sued for.

And now, in order to secure the prompt and punctual payment of said notes and interest to accrue thereon, as well as the amount of att'y's fees hereinabove fixed, the said Montgomery declares that he does hereby specially mortgage & hypothecate the said "Carondalet plantation" unto said Davis & to any other or future holder of said notes, binding himself hereby not to alienate or encumber the said property to the prejudice of this act, and the said Montgomery hereby recognizes that the said Davis reserves and is entitled to the vendor's privilege as further security for the payment of said notes, which said notes, being now produced, are this day paraphed by me, recorder, with the words "*ne varietur*" to identify them with this act.

678 In faith whereof said party signs these presents, together with and in presence of me, recorder, and said witnesses, after affixing and cancelling herein internal revenue stamps of the amount and value of thirty-two dollars.

(Sig'd) J. W. MONTGOMERY.

Witnesses:

(Sig'd) J. W. DRAUGHON.

(Sig'd) R. J. LONDON.

(Sig'd) S. D. OLIVER,
Deputy Recorder.

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the foregoing five (5) pages contain true & correct copies of the act of conveyance or deed and the mortgage *only* of record in this office in Notarial Book "N," folio 512, and in Mortgage Book "I," folios 404 & 405.

Given under my hand and seal of office this 26th day of July, 1882.

(Sig'd) F. H. G. TAYLOR,
Deputy Recorder.

679 EXHIBIT "S." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainant July 27th, 1882. Filed July 27th, 1882.

(Endorsed:) Deed & mortgage. J. W. Mongomery to J. L. McCarroll.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it remembered that on this 28th day of November, 1870, & in the presence of the witness hereinafter undersigned, before me,

Sanders D. Oliver, deputy recorder in and for said parish, personally came & appeared James L. McCarroll, who declared that for the price & consideration hereinafter named he has this day bargained, sold, and delivered, and does by these presents bargain, sell, & deliver with full warranty against all debts, claims, alienations, outstanding titles, mortgages, or other claims, except a certain mortgage hereinafter mentioned, unto John W. Montgomery, here present and accepting, the following property, situate in this parish about two miles below the town of Providence, to wit: That tract of land known as Holly Grove, late the residence of Wm. M. Deeson, being described by survey as or fractional sections twenty-five (25), twenty-six (26), twenty-seven (27), and one hundred and twenty acres adjoining lot or fractional section twenty-four (24), all in township 21, twenty-one,
680 north of range thirteen east; also all of section (64) sixty-four lying in the rear and adjoining the above lots, say 472 acres, & the northeast quarter of section sixty-three and the north half of the southeast quarter of section 63, sixty-three, and southwest quarter of section fifty-three (53), containing eleven hundred and seventy-six $\frac{85}{100}$ acres, lying south of a due east and west line, commencing front on the river at such a point in either lot or fractional sections No. 25 or 26 aforesaid and running due west so as to include said area or *quality* of land, by which line a portion of said subdivision will be placed on the north, and the rest, being the land herein conveyed, will be placed to the south; to have and to hold unto said purchaser, with all the rights, privileges, and appurtenances thereto belonging or in anywise appertaining, with full subrogation of all rights of action in warranty against previous vendors, and especially against the heirs of Wm. M. Deeson, dec'd. The price of this sale is declared to be the sum of thirty-one dollars and seventy-two & one-half cts. per acre, making the aggregate sum of thirty-seven thousand three hundred & five & $\frac{41}{100}$ dollars, which sum is paid as follows, to wit: The said purchaser has handed to the said vendor two acceptances of Samuel Friedlander, each for two thousand five hundred dollars, respectively, due 1st of February and 1st of March, 1871, which the vendor received as cash, and the said purchaser executed unto & delivered to said vendor his two
681 promissory notes of even date, each for two thousand one hundred & ninety $\frac{59}{100}$ dollars, due, respectively, in one & two years from 1st January, 1871, with 8% per annum interest after maturity until paid, and which notes are duly paraphed by me, deputy recorder, in order to identify them with this act, & for the balance of said price the said purchaser & vendor declares that there was a mortgage on said land in favor of the heirs of Wm. M. Deeson, now on record in this parish, for the sum of twenty-seven thousand nine hundred and twenty-four $\frac{40}{100}$ dollars, and the said purchaser agrees to let said land remain mortgaged for the security of said sum, & the vendor releases him from further liability on account of said purchase-money, he, the said vendor, taking the said property subject to said mortgage; and the said vendor binds himself to procure the renunciation in due form — his wife in reasonable time; & I hereby certify that the requisite revenue stamps are

duly put on this act of mortgage, as required by the revenue law of U. S.

Thus done & passed before me this the day and month & year first herein mentioned, in presence of A. W. Roberts & R. K. Anderson, competent witnesses, who sign with the parties & me, deputy recorder.

(Sig'd) JAS. L. McCARROLL.
(Sig'd) J. W. MONTGOMERY.

Attest: A. W. ROBERTS.
R. K. ANDERSON.

(Sig'd) S. D. OLIVER,
Deputy Recorder.

682 I hereby certify that the original act of the foregoing deed & mortgage cannot be found in this office, and that the above is a true and correct copy of same as appears on record in my office in Mortgage Book "I," folio 400.

Given under my hand & seal of office this 27th day of July, A. D. 1882.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
Deputy Recorder.

EXHIBIT "T." Referred — and made part of the foregoing testimony. Offered in evidence before special examiner by complainant July 27th, 1882. Filed July 27th, 1882.

(Endorsed:) Deed. C. M. Beard & husband to Wm. Craig. Filed Feb'y 1st, 1868. T. D. McCandless, recorder.

THE STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that on this the fifteenth day of January, A. D. eighteen hundred & sixty-eight, before me, Thos. B. Rhodes, notary public in and for the said parish and State, personally came and appeared Cordelia M. Beard, a resident of the parish of Carroll, in said State, assisted by her husband, Isham B. Beard, of the parish and State aforesaid, she being separate and apart in property, who
683 declared and acknowledged that for the price hereinafter expressed she has sold, conveyed, & delivered, & by these presents does sell, bargain, transfer, assign, & set over, unto Wm. Craig, a resident of Carroll parish, in the said State, present and accepting this sale for himself, his heirs, and assigns, the following property, to wit:

Being the same, beginning on the northern boundary of the northwest quarter of section No. fifty-eight, in township 19, range No. thirteen east, at a point 21 chains & 50 links from the northwest corner of the said quarter east, & running thence east on said line to the northeast quarter of the section fifty-eight; thence on the line forming the eastern boundary of said section fifty-eight, between said Isham Beard and William Henderson, twenty chains & 16 links; thence west to a point at which a north and south line drawn from

aforesaid place and beginning would be intersected; and thence north on said line to the place of beginning, said boundaries to include about one hundred and seventeen acres and $\frac{33}{100}$ of an acre, more or less, being the same land sold to Isham B. Beard by James Galloway and wife in the deed of record in the recorder's office in this parish, on folios 473 & 474 of Notarial Book "F"—

It being a portion of the same acquired of her husband, Isham B. Beard, by virtue of judgment issued from the 13th judicial
684 district court and deeded to her by the sherriff of Carroll parish, State of Louisiana; to have and to hold the said tract of land unto his heirs & assigns forever; the parties to this agree to dispense with the production of this certificate of mortgage required by article 3328 of the civil code of this State & exonerate the recorder of Carroll parish from any liability in the premises.

The price for which the above sale is made is the sum of twenty-five hundred dollars cash in hand paid.

Thus done and passed, in the parish of Carroll, in the presence of J. A. McDonald and J. H. McKenzie, witnesses of lawful age and domicil, who hereunto sign their names, together with the said parties & me, the said notary public, on this 15th day of January, A. D. 1868.

(Sig'd) C. M. BEARD.
(Sig'd) I. B. BEARD.
(Sig'd) WM. CRAIG.

Attest: J. A. McDONALD.
J. H. McKENZIE.

THOS. B. RHODES,
Notary Public.

I hereby certify that the within & foregoing act has been by me duly recorded in my notarial register.

Given under my hand and seal of office this the 15th day of January, A. D. 1868.

(Sig'd) T. B. RHODES,
Notary Public.

685 I hereby certify that the foregoing act of sale is a true & correct copy of the original of record in my office in Notarial Book "N," folios 48 and 49, and on file.

Given under my hand and seal of office this 22nd day of July, A. D. 1882.

(Sig'd) F. H. G. TAYLOR,
Deputy Recorder.

Endorsed on back:

I hereby certify that the within & foregoing act is duly of record in my office in Notarial Book "N," folios 48 & 49.

Given under my hand and seal of office this the 1st day of Feb'y, A. D. 1868.

(Sig'd) T. D. McCANDLESS, *Recorder.*

EXHIBIT "U." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by complainant July 27th, 1882. Filed July 27th, 1882.

(Endorsed:) 6203. W. W. Carson *vs.* T. B. Rhodes. Petition, &c.

To the honorable the judge of the district court in & for the parish of Carroll, Louisiana:

The petition of Wm. W. Carson, of the city of New York, represents—

That Thomas B. Rhodes, of the parish aforesaid, is in-
686 debted unto your petitioner in the sum of ten thousand dollars for this, that on the 22nd of March, 1869, the said Rhodes executed his note unto the order of J. W. Montgomery for that sum, due and payable on 1st Dec'r, 1873, with 8% per annum interest after maturity, subject to a credit of twenty-seven hundred dollars paid on 1st December, 1873, & also a further credit of one thousand five hundred & seventy-five dollars, paid on the 1st Dec'r, 1873, and by a further credit of two hundred & fifty dollars paid May 1st, 1874, which note was duly endorsed by the payee & delivered to petitioner.

Petitioner shows that said note was given as part of the price or consideration of the following-described property & plantation in this parish, known as the Airlie plantation, & bought by said Montgomery at a probate sale of the property of Dr. James G. Carson, dec'd, and described in the deed & act of conveyance from said Montgomery to said Rhodes as follows, to wit: That plantation known as "Airlie plantation," bounded in front by Mississippi river, in rear by Melbourne plantation, property of estate of O. J. Morgan, on the north by "Melbourne" or property of estate of Morgan aforesaid, & on south by property of Henry Goodrich & the public road known as the Monticello road, special reference being here made to the deed of sale from said Montgomery to said Rhodes now of record
in the recorder's office, a copy whereof is hereto annexed as
687 part hereof.

Amicable demand is alleged. Petitioner prays that def't be cited and condemned to pay the said note and interest subject to the credits aforesaid; that plaintiff's right of mortgage, which was agreed to in the deed of sale aforesaid, & also the vendor's privilege, may be recognized against the land & property aforesaid, and that the said property may be specially seized and sold to pay said sum and interest, & for costs & general relief.

(Sig'd) J. W. MONTGOMERY, *Att'y.*

I confess judgment in this case for plaintiff's demand & request court to enter up judgment accordingly with a stay of execution till the 1st of December, 1874.

June 4th, 1874.

THOS. B. RHODES.

Attest: J. W. MONTGOMERY.

District Court.

W. W. CARSON
vs.
THOS. B. RHODES. } 6202.

By reason of the law and the evidence being in favor of the plaintiff, & by further reason of the confession of judgment of defendant, duly proved, it is ordered, adjudged, and decreed that the pl't'ff do have and recover judgment against the defendant for the sum
688 of ten thousand dollars, with 8% per annum interest thereon from the 1st day of December, 1873, subject to a credit on said sum for twenty-seven hundred dollars, paid on said sum on 1st December, 1873, & a further credit — one thousand five hundred seventy-five dollars paid Dec'r 1st, 1873, and by a further credit of two hundred & fifty dollars paid on said sum on 1st May, 1874; that after these credits are allowed execution or other proper process may issue for the balance of this judgment in due course of law.

It is further ordered, adjudged, and decreed that pl'ff's right of mortgage & vendor's privilege against the following mentioned property may be recognized to take effect from 22nd March, 1869, to wit: That plantation in this parish known as "Airlie," bounded in front by the Missi. river, in the rear by Melbourne plantation or property of estate of O. J. Morgan, on the north by "Melbourne" or property of estate of Morgan aforesaid, on the south by property of Henry Goodrich & the public road known as the Monticello road; that said land and plantation may be specially seized and sold in due course of law in order to pay this judgment, interest and costs, & that the proceeds of the sale be applied to the payment of pl'ff's demand; that defendant pay costs of suit, to be taxed.

Read & signed in open court this 5th day of June, 1874; that def't have stay of execution till first Dec'r, 1874.

(Sig'd) WADE H. HOUGH,
Judge 13th District.

689 [Endorsed:] 6203. W. W. Carson *vs.* T. B. Rhodes. Petition & confession of judgment. Filed June 5th, 1874. (Sig'd) C. E. Man, Jr., d'y clerk.

Recorded in book "O," folios 301 & '2.

J. W. M.

THE STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

W. W. CARSON
vs.
THOS. B. RHODES. } No. 6203.

The State of Louisiana and said court to the sherriff of the parish of Carroll, Greeting:

We command you that by seizure and sale of the property, real and personal, rights, and credits of Thos. B. Rhodes in the manner prescribed by law you cause to be made the sum of ten thousand

dollars, with 8% per annum interest thereon from the first day of December, 1873, subject to a credit on said sum for twenty-seven hundred dollars, paid on said sum on 1st Dec., 1873, & a further credit of one thousand five hundred & seventy-five dollars, paid Dec. 1st, 1873, and by a further credit of two hundred & fifty dollars, paid on said sum on 1st of May, 1874; also plaintiff's right of mortgage & vender's privilege is recognized on the following-described property, to wit: That plantation known as "Airlie plantation," bounded in front by Miss. river, in rear by Melbourne plantation, north by same plantation, south by property of Henry Goodrich, all in this said parish & State, with $3.60 clerk's costs and your own costs, with sixty cents costs of this writ, to satisfy judgment lately rendered in our district court against the said Thos. B. Rhodes and in favor of said W. W. Carson; and of how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

690

Witness the Honorable Wade H. Hough, judge of said court, and the seal of said court this 8th day of February, in the year of our Lord 1876.

[SEAL.] (Sig'd) O. J. SWEET, *D'p'y Clk.*

Received the within *fi. fa.* on Tuesday, 8th day of February, A. D. 1876, and on the 12th day of same month and year served the same by seizing and taking into my possession the following-described property, to wit: That plantation known as "Airlie plantation," bounded in front by Mississippi river, in rear by Melbourne plantation, north by same plantation, south by property of Henry Goodrich, all in this parish and State, notice of which seizure I gave in writing to T. B. Rhodes, in the parish of Carroll, Louisiana. I then appointed said Rhodes keeper of said property and took his receipt for same, and on Saturday, 26th day of February, A. D. 1876, advertised said property for sale in *in* the True Republican, the official journal of the parish of Carroll, Louisiana, published weekly in said parish, to be sold at the door of the court-house in the town of Providence, in said parish and State, on the first Saturday, the first day of April, A. D. 1876, commencing at 11 o'clock a. m., for cash, with benefit of appraisement; and on the said day of sale, at the place and hour aforesaid, after causing said property to be duly appraised, and after reading this writ and the advertisement of sale and the recorder's certificate of mortgage, I offered said property for sale at public auction in an audible voice, but, no person bidding two-thirds of the appraised value of said property, there was no sale for want of a bidder.

691

Wherefore, on the 8th day of April, 1876, I readvertised said property for sale in said journal to be sold at the place aforesaid on the first Saturday, 6th day of May, A. D. 1876, on a credit of twelve months. The time to return this writ being about to expire I now return the same, retaining a copy hereof on which to make my final return, this the 18th day of April, A. D. 1876.

(Sig'd) CHARLES HICKS, *Sheriff*,
By S. D. OLLIVER, *D'y Sheriff.*

[Endorsed:] 6203. W. W. Carson *vs.* Thos. B. Rhodes. *Fi. fa.* Returned and filed April 18th, A. D. 1876. (Sig'd) C. J. Sweet, d'y cl'k.

692 THE STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

W. W. CARSON
vs.
THOS. B. RHODES. } No. 6203.

The State of Louisiana and said court to the sheriff of the parish of Carroll, Greeting:

We command you that, by seizure and sale of the property, real and personal, rights, and credits of Thos. B. Rhodes, in the manner prescribed by law, you cause to be made the sum of ten thousand dollars, with 8 % per annum interest thereon from the first day of December, 1873, subject to a credit on said sum for twenty-seven hundred dollars paid on said sum on the 1st Dec'r, 1873; and a further credit on said sum of one thousand five hundred and seventy-five dollars paid Dec'r 1st, 1873; and by a further credit of two hundred & fifty dollars paid on 1st of May, 1874; also plaintiff's right of mortgage and vendor's privilege is recognized on the following-described property, to wit: That plantation known as "Airlie plantation," bounded in front by Miss. river, in rear by "Melbourne plantation," north by same plantation, south by property of Henry Goodrich, all in said parish and State, with $3.60 clerk's costs and your own costs and sixty cents costs of this writ, to satisfy judgment lately rendered in our district court against the said Thos. B. Rhodes and in favor of said W. W. Carson; and of how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

693 Witness the Honorable Wade H. Hough, judge of said court, and the seal of said court, this 8th day of February, in the year of our Lord 1876.

By C. J. SWEET,
Deputy Clerk.

Received the within *fi. fa.* on Tuesday, the 18th day February, A. D. 1876, and on the 12th day of same month and year served the same by seizing and taking into my possession the following-described property, to wit: That plantation known as "Airlie" plantation, bounded in front by the Miss. river, in rear by "Melbourne plantation," north by same plantation, south by property of Henry Goodrich, all in this parish and State, notice of which seizure I gave in writing to T. B. Rhodes in person, in the parish of Carroll, Louisiana. I then appointed said Rhodes keeper of said property and took his receipt for same, and on Saturday, the 26th day of February, A. D. 1876, advertised said property for sale in the True Republican, the official journal of the parish of Carroll, Louisiana, published weekly in said parish, to be sold at the door of the courthouse in the town of Providence, in said parish and State, on the

1st Saturday, the 1st day of April, A. D. 1876, commencing at 11 o'clock a. m., for cash, with the benefit of appraisement; and on the said day of sale, at the place and hour aforesaid, after causing said property to be duly appraised, and after reading this writ and the advertisement of sale and the recorder's certificate of mort-
694 gages, offered said property for sale at public auction in lots of less than 50 acres, numbering them from one to 27, inclusive, according to plot of survey made by T. F. Montgomery, parish surveyor, in an audible voice, but no persons bidding two-thirds of the appraised value of the property there was no sale for want of a bidder.

Wherefore, on the 8th day of April, 1876, I readvertised said property for sale in said journal to be sold at the place aforesaid on the 1st Saturday, the 6th day of May, A. D. 1876, on a credit of twelve months. The time to return this writ being about to expire I now return the same, retaining a copy hereof on which to make my final return, this the 18th day of April, A. D. 1876; and on the said day of sale, at the place aforesaid, and within the hours prescribed by law, after again reading this writ and the recorder's certificate of mortgages and the advertisement, I again offered said property for sale at public auction in an audible voice, whereupon William W. Carson, the plaintiff, became the purchaser of the same for the price and sum of one thousand dollars, for which he gave his twelve months' bond in the sum of $1,000.00 bearing 8 *% per cent.* per annum interest from date, with J. W. Montgomery as his surety. Said land was sold in lots of less than fifty acres, numbering from one to twenty-seven (27), inclusive, according to plot of survey made by T. F. Montgomery, parish surveyor, after reserving 100 acres sold to F. Bernd, 85.25 acres sold to J. Stein & Co., and 14 acres to D. Jackson, and five acres reserved for David Jackson, leaving the amount
695 sold to be 795.75 acres, more or less; and I now return this writ accordingly.

CHARLES HICKS, *Sheriff*,
By S. D. OLIVER, *D'y Sheriff*.

[Endorsed:] 6203. W. W. Carson *vs.* Thos. B. Rhodes. *Fi. fa* Debt, ——; int., ——; credits, ——; clerk's costs, 4.20; deed & bond, 3.00; printer, ——; sheriff, 23.50; recorder, ——; certificate, deed, & bond, 5.00. Returned & filed May 6th, 1876. C. J. Sweet, d'y cl'k.

Twelve Months' Bond.

STATE OF LOUISIANA, *Parish of Carroll:*

Know all men by these presents that we, William W. Carson, as principal, and John W. Montgomery, as security, are held unto Charles Hicks, sheriff, in the sum of one thousand dollars, with interest at the rate of eight per cent. per annum from date till paid; for the payment whereof to W. W. Carson, pl't'ff, his executors, administrators, or assigns, we jointly and severally bind ourselves,
696 our heirs, executors, and administrators, respectively, by these presents, as witness our respective names and seals hereto

affixed, at the parish of Carroll, this 6th day of May, in the year one thousand eight hundred & seventy-six.

Whereas the above-bound William W. Carson has this day become purchaser of the "Airlie plantation," situated in the parish of Carroll, La., particularly described in act of mortgage from Thos. B. Rhodes to J. W. Montgomery, recorded in the recorder's office of this parish in Mortgage Book "I," folio 273, containing 1,000 acres, more or less, less 100 acres sold to Ferdinand Bernd, $85\frac{25}{100}$ acres sold to J. Stein & Co., 14 acres sold to David Jackson, & five acres more reserved for David Jackson seized at the suit of W. W. Carson *vs.* Thos. B. Rhodes, No. 6203 of the docket of the 13th district court in and for the parish of Carroll, and sold for one thousand dollars, payable in twelve months from the date hereof; and whereas by law the purchaser of property at sheriff's sale at twelve months' credit is bound to give security with mortgage on the premises sold:

Now, the condition of this obligation is such that if the above-bound William W. Carson, his heirs, executors, or administrators, shall at the expiration of twelve months from the date of the purchase aforesaid pay or cause to be paid the above sum of one thousand dollars, with interest at eight per cent. from the day of sale until paid, unto the said W. W. Carson, pl'ff, or his legal
697 assigns, then this obligation shall be void, or else remain in full force and virtue.

WM. W. CARSON.
J. W. MONTGOMERY.

Signed, sealed, and delivered in presence of—
CHARLES HICKS, *Sheriff.*

[Endorsed:] 6203. W. W. Carson *vs.* Thos. B. Rhodes. 12 months' bond. Filed May 6th, 1876. C. J. Sweet, d'y clerk.

STATE OF LOUISIANA, *Parish of Carroll:*

I hereby certify that the within bond is duly of record in my office, in Mortgage Book "O," folio 221.

Given under my hand and seal of office this 26th May, 1876.

[SEAL.] (Sig'd) C. J. SWEET, *D'y Clerk.*

W. W. CARSON
vs.
T. B. RHODES. } 6203.

FRIDAY, *June 5th*, 1874.

Judgment favor of pl't'ff, in accordance with confession. See decree.

I hereby certify the foregoing to be a true copy of the entry on the minutes of the 13th district court in and for the parish of Carroll, Louisiana, for the date as indicated above.

F. H. G. TAYLOR,
D'y Cl'k 8th District Court.

698 I hereby certify that the foregoing twelve pages contain a true & correct copy of the papers & documents filed, the orders

and decrees of court, judgment rendered, *fieri facias* & copies of same, & returns of sheriff thereon in suit numbered 6203 on the docket of the late 13th district court, styled W. W. Carson *vs.* T. B. Rhodes.

Witness my hand and seal of 8th district court, parish of East Carroll, La., this 26th day of July, A. D. 1882.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
D'y Cl'k 8th District Court.

EXHIBIT "V." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by complainant July 28th, 1882. Filed July 28th, 1882.

(Endorsed:) Sale of land. Succession of Dr. James G. Carson to J. W. Montgomery. Filed March 31st, 1869. A. G. Belden, d'y recorder.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that on this 9th day of December, 1868, before me, Thos. B. Rhodes, notary public in said parish, came and ap-
699 peared Mrs. Catherine Carson, executrix of the last will of Dr. Jas. G. Carson, through her duly authorized agent and attorney-in-fact, Joseph Carson, personally appearing, who declared & said that by virtue of an order & decree of the parish court of said parish & State for the sale of the property belonging unto the succession of said Dr. James G. Carson, dec'd, she caused said property which is hereinafter mentioned to be advertised for sale for cash, with the benefit of appraisement required in succession sales, the sale to be made on the premises on the 5th day of December, 1868, which advertisement was inserted & published for thirty clear days previous to the day of sale in the "Elton Eagle" & in the Carroll Record, two newspapers published in the said parish; that on the day of sale he, the said Joseph Carson, agent, repaired to the place of sale, the premises, and after having offered the Airlie plantation belonging to said succession of James G. Carson, deceased, & situate in this parish, to the highest bidder for cash, *when* John W. Montgomery bid for the same the sum of two doll's & fifty cent- per acre, & that being the appraised value thereof, as shown by the inventory of the same on file in court, the property was publicly adjudicated to him for *for* that sum, he being the highest & last bidder & having paid & settled the amount of his said bid, which amounted in the aggregate to the sum of two thousand five hundred dollars;
700 that in consideration of the premises the said Mrs. Catherine Carson, executrix aforesaid, does sell and deliver unto said purchaser, the said Jno. W. Montgomery, here present & accepting the said Airlie plantation, late the residence of said James G. Carson, dec'd, situated in this parish at & adjacent to Goodriche's landing, containing one thousand acres, more or less, bounded on the east & northeast by the Mississippi river, on the south by the public road leading from Goodriche's landing to Monticello, known as the Monticello road, and on the west & north by lands of the estate of O. J. Morgan, dec'd; to have and to hold unto him, the said Jno.

W. Montgomery, free from the claims of all persons whomsoever claiming or to claim the same.

Thus done and accepted before me the day & year first herein mentioned, in presence of Charles A. De France & Cicero M. Allen, both competent witnesses, who sign with the parties & me, notary.

(Sig'd) CATHERINE CARSON, *Ex'x*,
Per JOSEPH CARSON, *Agent.*
(Sig'd) J. W. MONTGOMERY.

Attest: C. M. ALLEN.
C. A. DE FRANCE.

THOS. B. RHODES,
Notary Public.

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale on file & of record in my office in Notarial Book " N," folio- 220 & 221.

Given under my hand & seal of office this 22d day of July, A. D. 1882.

F. H. G. TAYLOR,
D'p'y Recorder.

701 (Endorsed on back:) I hereby certify that the within act of sale is duly recorded in Notarial Book "N," folios 220 & 221.

Given under my hand & seal of office this 31st March, 1869.
(Sig'd) A. G. BELDEN,
D'y Recorder.

EXHIBIT " W." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by complainant July 28th, 1882. Filed July 28th, 1882.

(Endorsed:) Deed. J. W. Montgomery to Thos. B. Rhodes.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that on this 22nd day of March, 1869, & for the price & consideration hereinafter named & set out, I have this day bargained, sold, and delivered, & do hereby bargain, sell, and deliver unto Thos. B. Rhodes the following property, to wit:

That tract of land situated in this parish, known as the Airlie plantation, late the residence of Dr. James G. Carson, and bounded as follows: On the front by the Mississippi river; on the right
702 or east & southeast by the plantation formerly belonging to Henry Goodrich & the public road leading thence to Monticello, and know- as the Monticello road; on the left or north & northwest by the lands of the estate of Oliver J. Morgan, now owned by Jno. A. Buckner, and in the rear by lands of the Melbourne plantation, belonging now to said Buckner, containing about one thousand acres—

Hereby warranting the title hereto against the claim or claims of all and every person claiming or to claim the same and guaranteeing the same against all debts or other demands, together with all the rights, privileges, and appurtenances thereto belonging or in anywise appertaining.

The price and consideration of this sale is the sum of forty-seven thousand five hundred dollars, & for the security and payment of which the said purchaser, who is present, joining in and participating in this instrument, has executed unto me or my order seven promissory notes, all duly stamped with the U. S. revenue stamps, for the sums as follows, to wit: First, three notes of even date, each for two thousand five hundred dollars, falling due, respectively, on the 1st December, 1869, and the others annually thereafter; second, four notes, each for ten thousand dollars, of even date herewith, the first falling due on the 1st of December, 1872, and the others
703 annually thereafter. It is agreed by us, vendor and vendee, that this act of sale shall be hereinafter put in notarial form, there being no notary now present in the parish, with due & legal renunciation made by the wife of the vender; and that the purchaser buys said property subject to the taxes due on the same.

Thus done and accepted this 22nd day of March, 1869, in presence of the undersigned witnesses.

(Sig'd) J. W. MONTGOMERY.
(Sig'd) T. B. RHODES.

Attest: C. R. EGELLY.
S. G. McPHERSON.

STATE OF LOUISIANA, *Parish of Carroll:*

This day before me, A. G. Belden, deputy recorder, appeared J. W. Montgomery, who acknowledged that he signed and delivered the within act of conveyance for the purposes therein mentioned on the date thereof.

Done this 31st day of March, 1869.

(Sig'd) J. W. MONTGOMERY.

Attest: A. HANNA.
J. JARRETT.

A. G. BELDEN,
Deputy Recorder.

I hereby certify that the original ac't of deed & mortgage of the above cannot be found in my office, & that the foregoing is a
704 true & correct copy of same as appears on record in Notarial Book "N," folio 219.

Given under my hand & seal of office this 28th day of July, A. D. 1882.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
Deputy Recorder.

EXHIBIT "X." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner, by complainant, July 28th, 1882. Filed July 28th, 1882.

Petition for Appointment of C. R. Egelly as Administrator. Filed July 16th, 1868.

To the honorable the judge of the parish court in and for the parish of Carroll, State of Louisiana, *ex officio* judge of the court of probate:

The petition of Thomas H. Hunt, of John F. Irvine, — Hickey Morgan, commissioners of liquidation for the Bank of Louisiana; of J. S. and R. E. Neal, of Edward Sparrow and J. W. Montgomery, all of whom appear herein as creditors of the succession of James Railey, dec'd, represents that heretofore, to wit, on — day of —, 1866, one F. W. Boyd was appointed by the district court of said parish to represent said succession in the capacity of dative testamentary ex'r; that
705 he qualified, gave bond, and has administered on said estate in part only; that he leased out the plantation, without any order of court, for one year, and cultivated it himself during the year 1867; that he has never filed any account of his administration, but, on the contrary, has appropriated or used the rents & revenues of said estate for his individual benefit, without paying any of the creditors any portion of their just dues; that for the year 1866 he received for the lease of said plantation, as petitioners are informed & believed, a large sum of money, none of which he has accounted for; that he has abandoned his said administration & has no domicil or residence in this State, and is, as petitioners are informed, permanently absent therefrom; that he has never given any good and sufficient bond for the faithfulness of his administration, the security of his said bond being utterly and entirely insolvent; that he has no property in this parish, nor, as they believe, in this State; that he has never left any power of attorney authorizing any one to represent him in the management of said estate, as they verily believe.

Wherefore petitioners pray that the office of said Boyd & the administration of said estate may be declared to be vacant and unrepresented; that said Boyd be decreed to have abandoned his trust, and that, in order to protect the interest of creditors, an administrator may be appointed to finish the administration of said
706 estate, only partly administered by James G. Carson, testamentary executor, now deceased, and by said Boyd; that for this purpose Charles R. Egelly, of said parish, may be appointed to represent said estate in said capacity, the said Charles R. Egelly appearing herein by counsel & joining in the prayer of this petition. They further pray that a commission may issue to any notary public or other competent officer in the parish, authorizing him to make an inventory of the effects of said succession, and for general relief in the premises.

(Sig'd) SPARROW & MONTGOMERY,
Att'ys for Pet'rs.

Affidavit.

J. W. Montgomery, one of the counsel in this matter, being sworn, deposes and says that all the facts in the foregoing petition are true and correct to the best of his knowledge & belief.

(Sig'd) J. W. MONTGOMERY.

Sworn to and subscribed before me this 16th day of July, 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

Order.

STATE OF LOUISIANA, *Parish of Carroll:*

Probate Court.

By reason of the law being in favor of the petitioners, and due proof having been administered to the truth of their allegations, it is ordered, adjudged, and decreed that the prayer of the peti-
707 tion be granted; that said Boyd having abandoned his administration & having no residence or domicil in this State, his said office be held to be vacant and said estate to be unrepresented; that due notice be given of the appointment of said Egelly, and if no opposition be made thereto within ten days, as required by law, he be appointed and qualified as administrator for said succession on giving bond as required by law.

Thus done this 16th day of July, 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

Letters Filed Sept. 16th, 1868.

Parish Court.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it know- that Charles R. Egelly, having been appointed after due notice administrator of the estate of James Railey, deceased, and having taken the oath and given bond as required by law, he is hereby authorized to perform the duties of said office, and full faith *are* due his acts as such.

Witness the Hon. George C. Benham, judge of said court, this 16th day of September, 1868.

(Sig'd) GEORGE C. BENHAM, *P. Judge.*

708 *Boyd's Opposition. Petition.*

To the Hon. Geo. C. Benham, parish judge in and for the parish of Carroll, State of Louisiana:

The petition of Frederick W. Boyd, a resident of the State of Mississippi, with respect shows—

That he is the duly appointed executor of the last will and testament of Jas. Railey, late resident of your said parish and State; that he has duly administered the property of the succession of the said James Railey since his appointment and confirmation as executor under the will.

Petitioner further shows that an application has been made to your honorable court praying that C. R. Egelly, Esq., be appointed dative testamentary executor of the said succession, notwithstanding your petitioner is acting as executor of the same.

Wherefore your petitioner prays that the said application be rejected, and that the said applicant pay all costs of this proceeding, & for all general relief.

(Sig'd) GOODRICH, PILCHER AND MONTGOMERY, *Att'ys.*

709 *Inventory Taken by T. D. McCandless, Recorder. Filed September 17th, 1868.*

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that in pursuance of an order and decree of the parish judge in and for the parish of Carroll, State of Louisiana, dated 16th day of July, A. D. 1868, authorizing and requiring me to take an inventory and cause an appraisement to be made of all the property belonging to the succession of the late James Railey, dec'd—

I, Thomas D. McCandless, recorder in and for the parish of Carroll, State of Louisiana, duly commissioned and qualified, proceeded to take said inventory and cause said appraisement to be made by appointing John W. Hays and Michael Gingery, both residents of said parish and State, appraisers, to whom I administered the following oath, to wit:

We do, each of us, solemnly swear that we will well and truly appraise and the true cash value place upon all the property belonging to the succession of the late James Railey, deceased, which may be submitted to us for our decision to the best of our ability and understanding, so help us God.

(Sig'd) JNO. W. HAYS.
(Sig'd) MICHAEL GINGERY.

Sworn to and subscribed before me this — of Sept., A. D. 1868.
(Sig'd) T. D. McCANDLESS, *Recorder.*

710 Having thus sworn the said appraisers we proceeded, in presence of the undersigned witnesses, to make the following inventory and appraisement:

ITEM—*Land.*

All and singular that tract of land or plantation known as the "Front Railey" or "Raleigh" plantation, situated, lying, and being in the parish of Carroll, State of Louisiana, and in township No. nineteen north, of range thirteen (13) east, and bounded as follows, to wit: In front by the Mississippi river; in the rear by lands of I. B. Beard; on the left or above by the lands belonging to Dr. T. W. Lilly, known as Salem plantation, and below by the succession of Jonathan Morgan, and more particularly described in the deeds of sale to said James Railey as follows, to wit: Lots 33, 34, & N. ½

of section 35, and S. ½ of sec. 35, and so much of lot 36 as will include the quantity of 600 acres; also the E. ½ of N. E. ¼ of sec. 55; also that tract of land bo't by James Railey from Mrs. E. Savage, containing 219 acres, and bounded on the lower or east side by the lane which separated the lands of the said Railey & Savage; the first half of said 219 acres embraced in a uniform strip of the same width running the full depth of Mrs. Savage's tract, commencing at the bank of the Miss. river and running due south parallel with the lane aforesaid to land occupied by I. B. Beard,
711 the second remaining half of said 219 acres being embraced by a continuation of the front line up the river bank to a point terminating at the extremity of a piece of woodland which then divided the said Mrs. Savage's "front field" from the back, and thence due east to the intersection of the north and south line of the first aforesaid half of said 219 acres.

Also that tract of land bo't by James Railey from J. H. D. Bowmar, commencing at the bank of the Miss. river on the line between the lands then owned by the said Bowmar and Railey, at the place called "the Pecan Grove plantation," thence running due south to the southeast corner of the said Railey's said land; thence running east so far that by running a line due north & parallel with the line first above described to the bank of the Miss. river as will embrace and include 150 acres, and also the balance of the said Bowmar's land & Pecan Grove plantation, bounded on the east by the lands of the estate of Jonathan Morgan, on the south by the lands of I. B. Beard and Wm. Henderson, and on the west by what was previously known as James Railey's "Raleigh plantation;" and all said different tracks together now composing the said Raleigh plantation and containing the quantity of sixteen hundred and eighty-eight $\frac{70}{100}$ (1,688.70) acres, more or less, assessed at
712 one $\frac{50}{100}$ dollars per acre, amounting to the sum of $2,533.05, twenty-five hundred and thirty-three $\frac{5}{100}$ dollars.

Thus done, inventoried, and appraised at one sitting and without turning aside to other matters, at my office, in the town of Floyd, in said parish & State, in presence of Reuben S. A. McIntyre and Isaac P. Mathis, lawful witnesses, who hereto sign their names with said appraisers and me, recorder, on this the 4th day of September, A. D. 1868.

(Sig'd) JNO. W. HAYS.
(Sig'd) MICHAEL GINGERY.

Attest: R. S. A. McINTYRE.
I. P. MATHIS.

T. D. McCANDLESS, *Recorder.*

Petition of Egelly, Administrator, &c., and Order for Sale of Property. Filed Sept. 17th, 1868.

To the hon. the judge of the parish court in and for the parish of Carroll, Louisiana:

The petition of Charles R. Egelly, of your said parish, represents—That your petitioner has been appointed administrator of the suc-

cession of James Railey, dec'd, by virtue of an order and decree of your hon. court granted on the 16th day of July, 1868.

713 That by virtue of an order granted by said court an inventory & appraisement of the property of said succession has been duly made and is now on file in your said office.

Petitioner shows that on examination of the condition of said estate & of its liabilities he finds the following-mentioned claims now in judgment in the district court of said parish, to wit:

A judgment on mortgage in favor of Auguste Belmont, with 8% interest from Feb'y 22d, 1860, for this sum	$15,000 00
A judgment in favor of A. & M. Heine, with 8% interest from Feb'y 9th, 1861, for this am't	4,500 00
A judgment in favor of E. Currer & Co., with 5% int. from Aug. 3, '60, for this am't	800 00
A judgment in favor of J. S. & R. E. Neal for this amount & 8% int. from ——	2,716 00
A judgment in favor of the Citizens' Bank of La., with 8% int. from June 3, '61, for this	1,500 00
A judgment in favor of the Bank of La. for this amount & 8% int.	4,500 00
A judgment in favor of the estate of James G. Carson, due on a homologated account for this sum	10,000 00
A judgment on an account homologated in favor of Messrs. Sparrow & Montgomery, att'ys	6,000 00

Which claims and judgments are now due and amount to the sum of forty-six thousand dollars; that he has not in hand any means wherewith to settle up said indebtedness or any portion thereof; that in order to settle up the same a sale of the property of said estate is necessary.

714 Wherefore petitioner prays that an order may be rendered by your hon. court decreeing the sale of all the property mentioned in the inventory aforesaid for the purpose of paying the debts of said succession; that your petitioner, as administrator, be authorized to make said sale according to law, and for general relief in the premises.

(Sig'd) CHARLES R. EGELLY, *Adm'r.*

To the hon. the judge of the parish court in and for the parish of Carroll:

The Citizens' Bank of Louisiana, a judgment creditor of the estate of James Railey, dec'd, as set out above, appears and prays for leave to intervene in the foregoing proceedings of the administrator of said estate and joins in the prayer of the petition for a sale of the property of said estate in order to pay the judgment held by your petitioner, & for general relief, &c.

(Sig'd) SPARROW AND MONTGOMERY, *Att'ys.*

Filed Sept. 17th, 1868.

Order.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

The foregoing petitions of the administrator of the estate of James Railey, dec'd, and of the intervener, The Citizens' Bank, being
715 considered, it is ordered and decreed that the prayer of said petitioners be granted; that a sale of the property mentioned in the inventory taken by Thos. D. McCandless on the — day of September, 1868, and now on file be sold in block for the purposes of paying the debts of said succession; that said administrator be authorized to make said sale for cash, and that afterwards he shall file in said court a tableau of distribution among the creditors of said estate of the funds to be realized at and by said sale.

Thus done this 17th day of September, A. D. 1868.

(Sig'd) GEO. C. BENHAM, *P. Judge.*

Writ of Sale.

STATE OF LOUISIANA, *Parish of Carroll:*

PARISH JUDGE'S OFFICE.

To Charles R. Egelly, administrator of the succession of James Railey, dec'd:

You are hereby authorized and required to make a sale at public auction for cash of the "Raleigh plantation," the property of said succession, and particularly described in the inventory on file, said sale to be made in all respects according to law and the property to be sold in block; and how you shall execute this writ or commission make due return to my office.

716 Witness my official signature this 17th day of September, 1868.

(Sig'd) GEO. C. BENHAM,
Parish Judge.

Writ of Sale.

STATE OF LOUISIANA, *Parish of Carroll:*

Probate Court.

The State of Louisiana & said court to Charles R. Egelly, administrator on the estate of James Railey, deceased, Greeting:

You are hereby authorized and required to sell according to law the following-described property belonging to said succession, to wit: That property situated in said parish known and designated as the "Raleigh plantation," bounded in front by the Mississippi river, in the rear by the lands of I. B. Beard, on the left or above by the lands now belonging to Dr. W. T. Lilly, "Salem plantation," on the lower side by the lands of Jonathan Morgan's succession, and situated about sixteen miles below the town of Providence, and containing about sixteen hundred acres, more or less; terms of sale,

cash; and of how you shall have executed this writ due return make to this office as the law directs.

Witness the Hon. Geo. C. Benham, judge of said court, & the seal of said court, this the 18th day of Sept., 1868.

(Sig'd) J. L. CHEATHAM, *Clerk*,
By R. J. LONDON, *D'y Cl'k*.

717 *Return of Administrator C. R. Egelly on the Writs of Sale. Filed Apr'l 17th, 1869.*

Received the within writs of sale on the 18th day of September, 1868, and by virtue thereof and of the judgment of the parish court rendered on the — day of September, 1868, I, Charles R. Egelly, adm'r of the estate of James Railey, dec'd, did advertise the within-described property to be sold on the 20th day of October, 1868, at the door of the court-house in this parish, which advertisement was published in the "Elton Eagle," the official newspaper of the parish, for more than thirty clear days previous to the day of sale, and on the day of sale, to wit, the 20th day of October, 1868, I proceeded to the place of sale, and at the hour of 12 m. I read the judgment, writ, and advertisement aforesaid, and offered said property to the highest bidder for cash; whereupon William G. Wyly bid the appraised value thereof, and he being the last and highest bidder I struck off and adjudicated said land & plantation to him at and for the price and sum of $1.50 per acre, being the appraised value aforesaid, and his bid, amounting to $2,533.05, having been paid up at the time of sale, I return this writ accordingly this 20th day of October, 1868.

(Sig'd) CHARLES R. EGELLY,
Adm'r Est. James Railey.

718 *Final Account of C. R. Egelly, Adm'r. Filed April 17th, 1869.*

Estate of James Railey in ac. with Charles R. Egelly, Dr.

1868.

To this amount paid John L. Cheatham, clerk of court, as per voucher 1	$50 00
" this am't paid R. J. London, clerk, for costs of the proceedings, &c., as per voucher 2	31 65
" this am't paid Sparrow and Montgomery, att'ys, on the judgment in their favor rendered on an ac. & tableau of distribution filed by the representatives of the deceased ex'r for est. of Railey, as per voucher No. 3	2,351 15
" am't of commissions due and payable to accountant @ 2½ on the am't of the inventory on file	63 25
" am't paid "Carroll Record" newspaper for advertisements, as per voucher No. 4	15 00
" am't paid "Elton Eagle" for advertisements, &c., as per voucher No. 5	12 00
" am't reserved to pay costs of this proceeding	10 00
	$2,533 05

Estate of James Railey in ac. with Ch. R. Egelly, Cr.

By this am't rec'd on the sale of the Raleigh plantation, made under judg't of the parish court on the 20th day of October, 1868 ---------- $2,533 05

719 *Petition for Homologation of Ac. & Discharge.*

To the hon. the judge of the parish court of the parish of Carroll, State of Louisiana:

The petition of Ch. R. Egelly, adm'r of the est. of James Railey, dec'd, represents that the foregoing is a true and just account of his acts of administration of said estate; that the property of said est. having been duly sold under an order from your hon. court, the proceeds arising therefrom amounted to the sum of twenty-five hundred and thirty-three $\frac{5}{100}$ dollars, which money has been disbursed by him in the payment of the privileged claims and those incurred as expenses of administration, as per the debits of this account and vouchers annexed. Petitioner shows that said est. has been fully administered.

Wherefore he prays that the items of said ac. and the payments aforesaid may be recognized as valid and approved and homologated, and that your petitioner may be discharged from further administration, and that his official bond may be cancelled, and for general relief, &c.

(S'g'd) SPARROW AND MONTGOMERY, *Att'ys.*

Judgment Homologating Ac. and Discharging Egelly, Administrator. Filed April 17th, 1869.

720 In this case, it appearing that due notice of this petition and ac. was duly made, and the time having expired without opposition, and it being duly proved that said account is correct and properly supported by evidence—

It is, therefore, ordered, adjudged, and decreed that said account be homologated, allowed, and confirmed, and that there be judgment in accordance with the prayer of the petition, and that said administrator be discharged and his bond cancelled.

Read and signed in open court this 7th day of July, 1869.

(Sig'd) C. A. DE FRANCE,
Parish Judge.

Petition and Appointment of S. T. Austin Dative Testamentary Executor. Filed March 23d, 1875.

To the honorable judge of the parish court for the parish of Carroll, State of Louisiana:

The petition of Sterling T. Austin, a resident of the aforesaid parish and State, respectfully represents that the succession of James Railey is vacant and unrepresented; that in 1860 the said James Railey departed this life in this parish, leaving a large estate located in this parish; that after his death James G. Carson became testa-

mentary executor of his last will and testament, and served in
721 said capacity until he died, in 1863; that subsequently one F. W. Boyd was appointed dative testamentary executor, but removed from office by order of court July 16th, 1868. C. R. Egelly then took letters of administration, and, after partially administering the estate and selling out large and valuable property belonging to it in a hurried manner and at a ruinous sacrifice, said Egally retired from said administration and was discharged May 10th, A. D. 1869, since which time the said succession has remained unrepresented. He shows that there are debts of said succession yet unpaid, and that there are left some effects to it, to wit., some claims against the United States Government and against others; that this petitioner represents two of the beneficiary heirs to said succession, who are of age, to wit: H. O. Railey, son of said deceased, and the widow of C. R. Railey, another son being agent for them.

He also represents some of the creditors, and is hence entitled to administer said succession; shows that the effects will not be appraised at more than five hundred dollars; that as the succession is now so small it should be summarily administered and its affairs settled at small costs.

Wherefore he prays the court to appoint him dative testamentary executor of said succession in a summary manner on his complying with the law.

That an inventory be taken of the effects, & for general relief.

(Sig'd) ROBERTS AND NEWMAN, *Attorneys.*

722 Personally appeared before the undersigned authority Sterling T. Austin, who on oath declared that the allegations of the foregoing petition and the facts therein set forth are true to the best of his knowledge and belief.

(Sig'd) S. T. AUSTIN.

Sworn to and subscribed before me this 23d day of March, 1875.

(Sig'd) C. E. MOSS, JR.,
Parish Judge.

By reason of the law and evidence being in favor of this applicant, and on his affidavit to the truth of the allegations, and on their being borne out by the records of said succession, it is hereby ordered that Sterling T. Austin be appointed dative testamentary executor of the succession of James Railey, deceased, on his giving bond for $\frac{1}{4}$ over and above the amount of the inventory.

That a commission issue to a notary public or other officer to take an inventory of said estate.

Done, read, and signed at chambers this 23d day of March, A. D. 1875.

(Sig'd) C. E. MOSS, JR.,
Parish Judge.

Letters to Austin.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

723 Be it remembered that whereas Sterling T. Austin has been appointed dative testamentary executor of the succession of the late James Railey, deceased, and having given bond and security and taken the oath required by law, is therefore fully authorized and empowered to perform and discharge the duties of said appointment.

Witness the Hon. C. E. Moss, Jr., judge of said court, and the seal of said court, this the 23d day of March, A. D. 1875.

(Sig'd) T. J. GALBRETH,
Deputy Clerk.

Inventory. Filed March 23rd, 1875.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that, in pursuance of an order to me issued by the honorable probate court in and for the parish of Carroll and State of Louisiana, and of a commission issued by David Jackson, clerk of said court, and to me directed, authorizing and requiring me to take an inventory and cause an appraisement to be made of all the property, effects, rights, and credits of the late James Railey, deceased, which may be found in our said parish, &c.:

I, M. A. Sweet, recorder in and for said said parish and State, proceeded to execute said order by appointing M. Shelby Powell and Jas. S. Millikin to act as appraisers, to whom I administered
724 the following oath, to wit: We do, each of us, solemnly swear that we will well and truly appraise and the true cash value place upon all the property, effects, rights, and credits belonging to the succession of the late James Railey, dec'd, which may be submitted to us for our decision, to the best of our ability and understanding, so help us God.

(Sig'd) M. S. POWELL.
(Sig'd) JAS. S. MILLIKIN.

Sworn to and subscribed before me this 23d day of March, A. D. 1875.

(Sig'd) M. A. SWEET,
Recorder and ex Officio Not. Public.

We then proceeded to make the following inventory and appraisement:

Item 1st. Contingent claim against the United States Government for the am't of six thousand dollars, more or less, appraised and valued at	$150 00
Item 2nd. Claim against F. W. Boyd for the am't of—not known—appraised and valued at	150 00
Total appraisement	$300 00

State of Louisiana, Carroll parish, March 23d, A. D. 1875.

Thus done, inventoried, and appraised at one sitting, without turning aside to other business, under an order from T. J. Galbreth, deputy clerk of the 13th district court in and for this said
725 parish and State, and in the presence of the subscribing witnesses:

(Sig'd) M. S. POWELL.
(Sig'd) JAS. S. MILLIKIN.

Attest: THAD SMITH.
" J. E. MURRAY.

(Sig'd) M. A. SWEET, *Recorder.*

Petition for Another Inventory. Filed June 1st, 1875.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish Court.

SUCCESSION OF JAMES RAILEY, Dec'd.

The petition of Sterling T. Austin, dative testamentary executor of the succession of James Railey, dec'd, with respect shows that the property of said succession is more valuable than it was thought to be at the time of his appointment, and prays the court to order another inventory to be taken of the property of said succession.

(Sig'd) STERLING T. AUSTIN, *Pro. Per.*

Upon reading and considering the foregoing petition let an inventory be taken of the property of the succession of James Railey, dec'd.

Thus done and signed in chambers this 31st day of May, A. D. 1875.

(Sig'd) C. E. MOSS, JR.,
Parish Judge.

726 *Inventory Filed June* 1, 1875.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that in pursuance of an order to me issued by the honorable probate court in and for the parish of Carroll and State of Louisiana, and of a commission issued by T. J. Galbreth, d'y clerk of said court, and to me directed, authorizing and requiring me to take an inventory and cause an appraisement to be made of all the property, effects, rights, and credits belonging to the succession of the late James Railey, deceased, which may be found in our said parish, I, W. T. Smith, d'y recorder in and for said parish and State, proceeded to execute said order by appointing George P. Labarre and Charles Hicks to act as appraisers, to whom I administered the following oath, to wit:

We do, each of us, solemnly swear that we will well and truly appraise and the true cash value place upon all the property, effects, rights, and credits belonging to the succession of the late James

Railey, dec'd, which may be submitted to us for our decision, to the best of our ability and understanding, so help us God.

(Sig'd) GEORGE P. LABARRE.
(Sig'd) CHARLES HICKS.

Sworn to and subscribed before me this 1st day of June, 1875.

(Sig'd) W. T. SMITH,
D'y Recorder.

727 We then proceeded to make the following inventory and appraisement:

Contingent claim against the United States Government for the amount of six thousand dollars, more or less, appraised and valued at four thousand dollars.

Thus done, inventoried, and appraised at one sitting, without turning aside to other business, in presence of the subscribing witnesses, this 1st day of June, 1875.

(Sig'd) GEO. P. LABARRE.
(Sig'd) CHARLES HICKS.

Attest:

CHARLES DONALLY.
R. M. LACKEY.

(Sig'd) M. T. SMITH,
D'y Recorder.

STATE OF LOUISIANA, *Parish of East Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

I hereby certify that the foregoing twenty-seven pages contain a correct and complete transcript of all the papers and documents (excepting vouchers) filed in this office in the succession of James Railey, deceased, at and subsequent to the application of Charles R. Egelly for administration, filed July 16th, 1868.

Witness my hand and the seal of said court this 27th day of July, 1882.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
Deputy Clerk.

728 STATE OF LOUISIANA, *Parish of East Carroll:*

CLERK'S OFFICE 8TH DISTRICT COURT.

I hereby certify that the foregoing twenty-seven pages contain a true and correct transcript of the original papers (corresponding in character and title to the copies here given) on file in this office in relation to the succession of James Railey, deceased.

Given under my hand and the seal of said court this the 8th day of March, A. D. 1881.

(Sig'd) C. A. HEDRICK, *Clerk,*
[SEAL.] By F. H. G. TAYLOR, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

CLERK'S OFFICE OF THE 8TH DISTRICT COURT.

This transcript, being submitted to me for the purpose of making the proper certificate regarding the paper purporting to be the opposition of F. W. Boyd to the appointment of C. R. Egelly, a copy of which appears on page 6 of this transcript, I hereby certify that I found the original paper among the papers of the succession of James Railey, the same being written on one side of a half sheet of paper only, but there did not appear upon the paper any endorsement or evidence that it was ever filed; neither can I find on any of the dockets or minutes of court any evidence that it was ever
729 filed, beyond the fact that it was found to be among the mortuary papers.

Witness my hand and the seal of said court this 25th day of July, A. D. 1882.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
D'y Clerk.

Copies of Vouchers Referred to in the Final Account of C. R. Egelly, Adm'r, the Copy of which Appears in this Transcript, Begin-ing on Page 17.

Voucher No. 1.

Rec'd Oct. 20, '68, of C. R. Egelly, adm'r of est. of James Railey, the sum of fifty dollars, in payment of fees and costs due John L. Cheatham, clerk of court.

(Sig'd) SPARROW AND MONTGOMERY,
Att'ys for J. L. Cheatham.

Voucher No. 2.

Rec'd, Succession of James Railey.

Received of J. W. Montgomery the sum of $31.65, the costs in the above succession since the 17th day of Sept., 1868, the costs prior to that being yet due.

Dec. 28th, 1868.

(Sig'd) R. J. LONDON,
D'y Clerk.

Voucher No. 3.

Rec'd October 20, 1868, of Charles R. Egelly, adm'r of the est. of James Railey, dec'd, the sum of twenty-three hundred and
730 fifty-one $\frac{1}{100}$ dollars for fees due us for procuring appointments of adm'r and the taking of an inventory, order of sale, and rendition of final ac. of adm'r, and in part payment of other fees due us, as per judgment of homologation of the final account rendered of the acts and doings of the executor, James G. Carson, now on file in the parish court.

(Sig'd) SPARROW AND MONTGOMERY,
Att'ys-at-Law.

Voucher No. 4.

C. R. Egelly, administrator.

1868, Nov.	Notice of application of adm'r of Railey est.----	$2 50
	Advertisement of sale----------	12 50
		$15 00

(Sig'd) E. J. DELANY, *Ag't.*

Endorsed across the face: Charge to account of J. W. Montgomery.

Voucher No. 5.

Rec'd April 10, '69, of Ch. R. Egelly, adm'r of est. of James Railey, twelve dollars for bill due "Elton Eagle" for advertisement of final ac. by adm'r.

(Sig'd) J. W. MONTGOMERY,
Att'y for Geo. C. Benham, Printer of "Elton Eagle."

I hereby certify that the foregoing are true and correct copies of the original vouchers in this office found among the papers of succession of Jas. Railey and referred to in the final ac. of C. R. Egelly, adm'r.

(Sig'd) F. H. G. TAYLOR,
D'y Clerk 8th Dist. Court, Parish of East Carroll.

731 EXHIBIT "Y." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainants July 28th, 1882. Filed July 28th, 1882.

(Endorsed:) Transcript of papers in succession of James Railey, dec'd, from the opening of the succession down to July, 1868.

732 *Petition of J. G. Carson to have the Will Registered, &c.*

SUCCESSION OF JAMES RAILEY, Deceased.

To the hon. the judge of the 10th judicial district court in & for the parish of Carroll, State of Louisiana:

The petition of James G. Carson, who resides in the said parish, with respect, shows—

That on or about the first day of September last (1860) James Railey departed this life, leaving in the said parish a large estate, consisting of lands, slaves, and other property.

That at the time of his death & for a long time before the said Railey resided and was domiciliated in Adams county, State of Mississippi.

That at his death he left his will in olographic form, by which he disposed of all of his property in this State and elsewhere.

That said will was duly proved and ordered to be executed by the probate court of Adams county, where deceased lived during several years last before his death, a duly certified copy of which

will & the proceedings thereon is annexed hereto and made a part of this petition.

Shows that by said will petitioner has been appointed executor thereof, so far as the same involves the administration of the property in this State, of which he is given seizure for said purposes of administration, and thereby dispensed with giving security.

733 Wherefore petitioner prays that the said will may be duly registered in your honorable court & the execution thereof ordered, and that petitioner may be appointed and confirmed as testamentary executor of the said will and estate and dispensed with giving security, and that letters testamentary issue to him upon his taking the oath prescribed by law; and prays for general relief, &c.

(Signed) SPARROW AND MONTGOMERY,
Att'ys for Petitioner.

By reason of the law and the evidence supporting the statements of the petition, it is ordered that the petitioner, James G. Carson, be, and he is hereby, recognized and appointed testamentary executor of the said last will and testament of the said James Raily, deceased, for the administration of the succession of the deceased in this State, and that he be dispensed with giving security, and that letters testamentary issue to him upon his taking the oath prescribed by law.

Done and signed, at my office in said parish, at Floyd, this 3rd day of Nov., A. D. 1860.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

Endorsed: Filed Nov. 3rd, 1860. (Signed) John L. Cheatham, clerk.

734 *Will and Probate.*

"*Ne varietur.*"

Parish of Carroll, La., Nov. 3rd, 1860.

(Signed) JOHN L. CHEATHAM, *Clerk.*

STATE OF MISSISSIPPI, *Adams County:*

OAKLAND, *Feb'y 1st*, 1860.

I, James Railey, of the county and State before mentioned, being of sound mind and disposing memory, do make, publish, and declare this instrument of writing to be my last will and testament in the olographic form, and desire all courts having jurisdiction over wills in Mississippi, Louisiana, Arkansas will not in any way interfere in its full execution according to its letter, without any regard to forms of law or technicalities, to wit:

At my death I give to my wife, Matilda S. Railey, all the estate I may own of every kind in the State of Missi., and give all in fee simple, except my slaves Augusta and Sarah and their children, which said slaves and the future increase of Augusta and Sarah I give to my said wife during her natural life; and then the slaves, with their future increase, I give to my brother, Logan Railey, of Ky., knowing he will treat them with kindness and give them all

the comfort they require and all the lenity from hard work they may merit.

It is my will that all my property in Louisiana and Arkansas be kept together as I may leave it until all my just debts are paid,
and desire that my friend, James G. Carson, of Carroll
735 parish, take the two plantations, Raleigh and Carondalet,
under his management, and that my friend, James Carson, Jr., of Natchez, take my "Deerfield" plantation in Ark. under his supervision until my debts are paid, and he, the said James Carson ("*Ne varietur*," parish of Carroll, La., Nov. 3rd, 1860, signed John L. Cheatham, clerk), is requested hereby to make a charge for his services and his charge not to be questioned, but paid out of the proceeds of the crop.

After all my debts are paid, together with any legacies I may make, I wish my friend-, James G. Carson and James Carson, Jr., to divide as equally as possible my Raleigh and Carondalet plantations, giving Raleigh to my daughter, Mary E. R. Boyd, with all the negroes and stock, &c., and to my son, H. Otey Railey, Carondelet, with negroes, stock, &c., and should my grandson, Ernest H. Railey, survive to grow to the age of twenty-one years my friends above named, James G. Carson and James Carson, Jr., will give him possession of the Arkansas plantation called "Deerfield," but should my grandson not survive to the age of twenty-one years, then the Ark. place called "Deerfield" is to be sold in block, or otherwise as may be thought best to the interest of my estate.

It is humiliating to me to say what course I wish taken in regard to my son, Charlie Randolph Railey. I desire my friend, James G.
Carson, to pay to Charlie the sum of one thousand dollars per
736 annum, in quarterly payments, and give, as a justification on
my part for so doing, and to give to the courts a- full evidence of the necessity of this course, the following statement:

Charlie was tried for murder and confessed the act, and nothing but the proof as was given by his school-teacher and Dr. Metcalfe, my family physician ("*Ne varietur*," parish of Carroll, La., Nov. 3rd, 1860, signed John L. Cheatham, clerk), that Charlie had not mind enough to be responsible for his acts, saved him from the penalties of the law.

Under this state of things, I feel it my duty not to place property or funds (only for his support) in his possession.

The annuity to be paid to Charlie will be retained—one-third from each, Carondelet, Raleigh, and Deerfield—and should events occur to make the amount annually greater my friend James G. Carson is hereby authorized to — all necessary in the matter.

I forgive M. E. R. Boyd all the account I have charged to her.

After all my just debts are paid I give to my niece, Belle Railey, and to my niece, Cornelia Railey, both daughters of Logan Railey, of Ky., each the sum of five thousand dollars.

Signed the day and date above written, at Oakland.

(Signed) J. RAILEY.

NOTE.—There are many slaves secured to Mrs. Railey by wills,

737 deeds, &c., and some have intermarried with some of my own. Mrs. R. and myself have exchanged many, and she may continue to do so at pleasure, excepting Sarah and Augusta and children. See list of exchange on my old tax book, made out by E. Stanton and signed by M. S. R. and J. R., in Mr. Stanton's presence, as witness.

"*Ne varietur.*"

Parish of Carroll, La., Nov. 3rd, 1860.

(Signed) JOHN L. CHEATHAM, *Clerk.*

THE STATE OF MISSISSIPPI, *Adams County,* } *ss:*

In the Probate Court of said County, at the September Term, A. D. 1860.

In the matter of a certain instrument of writing purporting to be the last will and testament of James Railey, deceased.

Personally appeared, in open court, at the above-stated term, F. Dryden Stockman, Audley C. Britton, and James N. Stockman, who, having first been duly sworn, severally deposed and said that they were well acquainted with the handwriting of James Railey, late of said county, deceased, having often seen him write and sign his name, and that the whole of the foregoing instrument of writing, as well as the signature thereto, purporting to be the last will and testament of said James Railey, is in the proper handwriting of the said James Railey, and that on the 1st day of February, 1860, the day of the date of the said instrument, the — James Railey
738 was twenty-one years and upwards of age and of sound and disposing mind.

(Signed) F. D. STOCKMAN.
A. C. BRITTON.
JAS. N. STOCKMAN.

Sworn to and subscribed, in open court, September 26, 1860.

(Signed) RICH'D A. INGE, *Clerk.*

A certain instrument of writing, purporting to be the last will and testament of James Railey, deceased, was brought into court, proven by the testimony of F. Dryden Stockman, Audley C. Britton, and James N. Stockman to be wholly in the handwriting of said James Railey, and ordered to be recorded as his last will and testament.

"*Ne varietur.*"

Parish of Carroll, La., Nov. 3rd, 1860.

(Signed) JOHN L. CHEATHAM, *Clerk.*

THE STATE OF MISSISSIPPI, *Adams County,* } *ss:*

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify that the foregoing four pages contain a true and perfect copy of the original last will and testament and the proof thereof

of James Railey, deceased, and the order of court made thereupon, as the same remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and seal of said court, at Natchez, the 19th day of October, A. D. 1860.

(Signed) RICH'D A. INGE, *Clerk.*

739 Endorsed: Succession of James Railey. Will and probate. Filed Nov. 3rd, 1860. (Signed) John L. Cheatham, clerk.

THE STATE OF MISSISSIPPI, *Adams County,* } ss:

I, Reuben Bullock, judge of the probate court (sole and presiding) of said county and State, do hereby certify that Richard A. Inge, whose genuine signature appears to the foregoing certificate and attestation, is, and was at the date thereof, clerk of said court, duly elected, qualified, and commissioned; that his said certificate and attestation are in due form of law, and that all of his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout.

Given under my hand and seal this 19th day of October, A. D. 1860.

(Signed) R. BULLOCK, *Judge.* [SEAL.]

"*Ne varietur.*"

Parish of Carroll, La., Nov. 3rd, 1860.

(Signed) JOHN L. CHEATHAM, *Clerk.*

Oath of Executor.

STATE OF LOUISIANA, *Parish of Carroll:*

Tenth District Court.

I, James G. Carson, do solemnly swear that I will faithfully perform and discharge all the duties incumbent on me as testa-
740 mentary executor of the last will and testament of the late James Railey, now deceased, to the best of my ability and understanding, "so help me God."

(Signed) JAMES G. CARSON.

Sworn to and subscribed before me this the 26th day of November, A. D. 1860.

(Signed) I. N. KENT, *Deputy Clerk.*

Letters to Executor.

STATE OF LOUISIANA, *Parish of Carroll:*

Tenth District Court.

Be it remembered that whereas James G. Carson has been confirmed as executor of the last will and testament of the late James Railey, now deceased, and having taken the oath required by law, he is therefore fully authorized and empowered to perform and discharge all the duties of said capacity.

Given under my hand and seal of the district court of the parish of Carroll, La., this the 26th day of November, A. D. 1860.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

Petition and Order for Inventory.

To the hon. the judge and clerk of the district court of the parish of Carroll, State of Louisiana:

741 The petition of James G. Carson, of said parish, represents that petitioner has been confirmed and qualified as executor of the last will and testament of James Railey, deceased; that said Railey left a large property in this parish, consisting of movables and immovables and slaves; that petitioner is required by law to have made, by the proper officer, an inventory of said property.

Wherefore petitioner prays that an inventory of the property of said succession may be ordered, and that for the purpose of making the same a commission may issue to the recorder or to any notary public of the parish, and prays for all such orders, &c., as to the nature of the case may belong.

(Signed) SPARROW AND MONTGOMERY,
Att'ys for Pet'r.

It is ordered that an inventory be made as prayed for.
Parish of Carroll, La., November 29th, 1860.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

Endorsed: Est. of James Railey, dec'd. Petition for inventory Filed Nov. 29th, 1860. (Signed) John L. Cheatham, clerk.

742 *Inventory.*

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that in pursuance of an order to me issued from the office of the clerk of the tenth judicial district court in and for the parish of Carroll, State of Louisiana, authorizing and requiring me to make an inventory estimative and descriptive of all the property and effects, rights and credits, belonging to the succession of the late James Railey, of said parish, now deceased, and due return make, &c.,—

I, Charles R. Purdy, deputy recorder and *ex officio* notary public in and for the parish of Carroll, State of Louisiana, duly appointed and sworn, did repair to the late residence of James Railey, deceased, on the plantation known as Raleigh plantation, and did then and there proceed to take said inventory and cause said appraisement to be made by appointing Isham B. Beard and Samuel Richardson, both residents of said parish and State, to act as appraisers, to whom I administered the following oath, viz: We do each of us solemnly swear that we will a due appraisement make and the true cash value place upon all and singular the property,

effects, rights, and credits of and belonging to the succession of the late James Railey, deceased, which may be submitted to us
743 for our decision, so help us God.

(Signed SAM'L RICHARDSON.
I B. BEARD.

Sworn to and subscribed before me this 12th day of December, A. D. 1860.

(Signed) CHARLES R. PURDY,
Dep'ty Recorder.

Whereupon we proceeded, in the presence of the witnesses hereinafter named and undersigned, to make the following inventory and appraisement, to wit:

ITEM 1ST.—*Lands or Lots of Ground.*

A certain tract of land lying on the front of the Raleigh plantation and cultivated by the hands on said place, containing eleven hundred and sixty-two acres—

1,162 acres, appraised at $75.00 per acre	$87,150 00
Also two hundred and ninety-seven acres of land connected with the Raleigh plantation and cultivated by the hands of Carondelet plantation:	
297 acres, appraised at $85.00 per acre	25,245 00
Also two hundred and eighty acres of land known as the Goffe tract:	
280 acres, appraised at $25.00 per acre	7,000 00
Total appraised value of land in Raleigh plantation	$119,395 00

ITEM 2ND.—*Slaves.*

	Years aged.	Appraisement.	
1st family:			
Amos Bell	23	1,200 00	
Fanny Bell	18	100 00	
			$2,200 00
744 2nd family:			
Archy Moore	24	1,300 00	
Mary	35	800 00	
Shedrich	5	200 00	
Fanny	3	150 00	
Aleck	1	100 00	
			2,550 00

ITEM 2ND—*Slaves*—Continued.

	Years aged.	Appraisement.	
3rd family:			
Wiley	31	1,200 00	
Sophy	26	1,000 00	
Littleton	5	200 00	
John	1	100 00	
			2,500 00
4th family:			
Edward	31	1,200 00	
Fanny	27	900 00	
Maria	6	200 00	
Horace	4	200 00	
Jonna	1	100 00	
			2,600 00
5th family:			
Bob	34	1,100 00	
Ann	29	900 00	
Jerry	4	200 00	
Winney	2	100 00	
			2,300 00
6th family:			
Jim	32	1,100 00	
Malinda	36	800 00	
Alsy	10	500 00	
Peter	11	500 00	
Wesley	6	300 00	
Celyun	2	150 00	
George, infant		100 00	
			3,450 00
745 7th family:			
Andrew	23	1,200 00	
Cynthia Ann	28	1,000 00	
Peter	12	400 00	
			2,600 00
8th family:			
Anderson	28	1,200 00	
Nancy	32	600 00	
Freeman	1	100 00	
			1,900 00
9th family:			
Mike	34	1,200 00	
Katy	34	900 00	
Gus	4	250 00	
Georgiana	3	250 00	
Affy	1	100 00	
			2,700 00

ITEM 2ND.—*Slaves*—Continued.

	Years aged.	Appraisement.	
10th family:			
John Hogan	26	1,000 00	
Martha	26	1,000 00	
Eliza	5	200 00	
Matilda	2	100 00	
			2,300 00
11th family:			
Milton	27	1,000 00	
Rachael	36	800 00	
Robert	11	500 00	
America	8	500 00	
Jake	6	250 00	
			3,150 00
12th family:			
Archy	39	1,000 00	
Eliza	35	800 00	
Joe	11	500 00	
Apeline	9	300 00	
Jeanette	5	200 00	
Nancy	2	100 00	
746 Hannah	60	5 00	
			2,905 00
13th family:			
John W.	42	900 00	
Hannah L.	42	900 00	
			1,800 00
14th family:			
Martin	25	1,200 00	
Lucy	25	1,000 00	
			2,200 00
15th family:			
Rowes	38	1,000 00	
Ellen	38	600 00	
Ella	10	400 00	
Brud	6	300 00	
Rowes, Jr.	3	200 00	
Cod	1	100 00	
			2,600 00
16th family:			
Jackson	40	1,000 00	
Jennie	24	900 00	
Octavia	3	200 00	
Jane	1	100 00	
Harriet	50	400 00	

ITEM 2ND.—*Slaves*—Continued.

	Years aged.	Appraisement.	
Flora (one arm)	18	300 00	
Prince	13	1,000 00	
Adeline	8	500 00	
Kate	5	300 00	
Susan	1½	100 00	
			4,800 00
17th family:			
Logan	50	800 00	
Francis (rheumatism)	40	5 00	
Hamilton	14	1,000 00	
Matilda	12	700 00	
Clariper	8	300 00	
747 Logan, Jr.	4	250 00	
Aaron	2	100 00	
			3,155 00
18th family:			
Rolla	45	800 00	
Cynthia	45	500 00	
Frederick	10	400 00	
Hester	3	200 00	
			1,900 00
19th family:			
George	44	50 00	
Narcis	58	600 00	
Charles Bosier	20	1,000 00	
Armstead	10	500 00	
Esther	5	250 00	
Francis	1	100 00	
			2,500 00
20th family:			
Charles (blacksmith)	38	1,500 00	
Nanny	32	1,000 00	
Ire	16	1,000 00	
Arnold	5	300 00	
Louise	2	100 00	
			3,900 00
21st family:			
Tom	50	750 00	
Sally	48	750 00	
			1,500 00
22nd family:			
Isaac	52	750 00	
Phillis	49	600 00	

ITEM 2ND.—*Slaves*—Continued.

	Years aged.	Appraisement.	
Jim	20	1,200 00	
Fishy	11	700 00	
23rd family:			
John B. (carpenter)	70	1,000 00	
Minerva	35	800 00	
748 Porker	17	1,000 00	
Otey	6	300 00	
			3,100 00
24th family:			
Henry	26	1,200 00	
Sophia	28	800 00	
Harriet	1	100 00	
			2,100 00
25th family:			
Mortimer	55	1,000 00	
Martha	23	900 00	
Laura	16	700 00	
Hannah	10	500 00	
Mary E.	8	400 00	
Celeste	6	400 00	
Charlotte	3	200 00	
Letty	1	100 00	
			4,200 00
26th family:			
Cad	42	1,100 00	
Mary	37	800 00	
			1,900 00
27th family:			
Liddy	60	50 00	
Lucy	21	1,000 00	
Scott	2	100 00	
			1,150 00
28th family:			
Henry	38	1,000 00	
Florida	34	1,000 00	
Charley	9	500 00	
Grace	6	300 00	
Willie	3	200 00	
Donis	1	100 00	
			3,100 00
Diana	60	----------	100 00
749 29th family:			
Billy	60	400 00	

ITEM 2ND.—*Slaves*—Continued.

	Years aged.	Appraisement.	
Julia	38	700 00	
Dennis	8	400 00	
William	7	300 00	
Delphy	2	100 00	
			1,900 00
30th family:			
Fanny G.	60	50 00	
Mary Ann	46	650 00	
St. Louis	9	500 00	
Ephraim	7	300 00	
			1,500 00
31st family:			
Freeman	30	1,500 00	
Lucinda	38	700 00	
			2,200 00
32nd family:			
Joshua	64	5 00	
Susan	36	600 00	
Hugh	16	1,000 00	
Robert	12	500 00	
			2,105 00
33rd family:			
Jim Ruck	58	500 00	
Dicey	24	900 00	
Narcis	4	200 00	
			1,600 00
34th family:			
Big Annie	40	500 00	
Harry	11	500 00	
Dicey	5	300 00	
Carry	1	100 00	
			1,400 00
35th family:			
Collin	32	1,100 00	
Sally	40	400 00	
Emma	16	900 00	
750 Tina	12	600 00	
Maria	11	400 00	
Sandy	6	300 00	
Rose	1	100 00	
			3,800 00
36th family:			
Frank	60	100 00	
Aggy	58	150 00	
			250 00

ITEM 2ND.—*Slaves*—Continued.

	Years aged.	Appraisement.	
37th family:			
Milly	50	50 00	
Martha	22	800 00	
Jane	55	200 00	
Frank	14	1,000 00	
Oscar	10	700 00	
			2,750 00
Total appraised value of slaves on Raleigh plantation			$91,915 00

ITEM 3RD.—*Horses, Mules, &c.*

46 head mules and horses, appraised at $150.00		$6,900 00
4 yoke of oxen, appraised at $70.00		280 00
54 head of sheep, " 3.00		162 00
20 " cattle, " 7.00		140 00
12 " hogs, " 5.00		60 00
Total appraised value of horses, mules, &c., on Raleigh plantation		$7,542 00

ITEM 4TH.—*Farming Implements, &c.*

1 ox wagon,	appraised at	$70 00
1 horse "	" "	50 00
1 " "	" "	70 00
1 ox "	" "	40 00
1 mule wagon	" "	125 00
751 20 double sweeps,	" " 3.00	60 00
24 single "	" " 2.00	48 00
2 double scrapers,	" " 15.00	30 00
20 harrows,	" " 3.00	60 00
54 ploughs,	" " 2.50	135 00
12 " (old)	" " 50c.	6 00
25 double-trees,	" " 50c.	12 50
50 single "	" " 25c.	12 50
46 spades,	" " 50c.	23 00
12 axes,	" " 50c.	6 00
1 lot chains,	" "	10 00
3 C.-cut saws,	" " 5.00	15 00
1 lot hoes,	" "	5 00
Tools and iron,	" "	100 00
21 openers and scrapers	" " 1.00	21 00

1 small wagon	"	"		25 00
3 cotton planters,	"	"	10.00	30 00
1 horse cart,	"	"		30 00
15 scrapers,	"	"	4.00	60 00
1 buggy,	"	"		150 00
House and kitchen furniture				200 00
1 shot-gun				00 00
Carpenter's tools				20 00
Total appraised value of farming utensils, &c., on Raleigh plantation				$1,414 00

ITEM 5th.—*Crop and Supplies.*

6,000 bushels corn,	appraised at		61c. per bus.	4,500 00
20 tons fodder,	"	"	20.00 per ton	400 00
169 bales cotton, pressed,	"	"	25.00 per bale	4,225 00
180 " " not "	"	"	25.00 " "	4,500 00
752				
200 bales cotton in the field,	"	"	15.00 per bale	3,000 00
41 barrels pork,	"	"	16.00 " bar	656 00
5 " lime,	"	"	1.00 " "	5 00
1 skiff,	"	"		5 00
20 kegs nails,	"	"	4.50 per keg	90 00
1 lot medicine,	"	"		10 00
3 bales bagging,	"	"	41.40 per bale	120 20
3 coils rope,	"	"	9.60 " coil	28 80
15 gallons whiskey	"	"	2.00 " gallon	30 00
Total appraised value of crop and supplies on Raleigh plantation				17,570 00

Recapitulation

Item 1st, lands	119,395 00
" 2nd, slaves	91,915 00
" 3rd, horses, mules, &c	7,542 00
" 4th, farming utensils, &c	1,414 00
" 5th, crop and supplies	17,570 00
	$237,836 00

Amounting in recapitulation of "Raleigh" plantation to the sum of two hundred and thirty-seven thousand eight hundred and thirty-six dollars.

We then proceeded to the plantation belonging to the said succession, known as "Carondelet" plantation, and made the following inventory and appraisment, to wit:

Inventory.

ITEM 6th—*Lands.*

753 A certain tract of land known as Carondelet plantation, containing eleven hundred and sixty acres:

1,160 acres, appraised at $80.00 per acre; total appraised value of land in Carondelet plantation, $92,800.00.

ITEM 7TH.—*Slaves.*

	Years aged.	Appraised at—	Total.
1st family:			
Harris	42	1,000 00	
Sarah	37	800 00	
2nd family:			
Hollis	36	1,000 00	
Hector	41	300 00	
Lizzy	15	1,000 00	
Winston	11	500 00	
Beck	8	400 00	
Rhoda	5	300 00	
			$3,500 00
3rd family:			
Obed	63	300 00	300 00
4th family:			
Lewis Winston	55	500 00	
Juda D.	61	100 00	
Pateener	33	900 00	
			1,500 00
5th family:			
Mat Page	55	400 00	
Sabra	43	400 00	
Mat, Jr.	4	200 00	
			1,000 00
6th family:			
Jack Richardson	56	5 00	
Israel	53	500 00	
Betsy S.	48	400 00	
Silvy	8	400 00	
Mary	19	1,000 00	
754 Nelson	51	400 00	
Sarah	39	500 00	
Fred.	19	1,100 00	
Coraline	15	1,000 00	
Nelson, Jr.	14	700 00	

ITEM 7TH.—*Slaves*—Continued.

	Years aged.	Appraised at—	Total.
Sarah	9	550 00	
Jim	8	400 00	
Aleck	7	300 00	
Charley	6	250 00	
Clarissa	5	200 00	
			7,705 00
7th family:			
Peter	53	100 00	
Charity	66	100 00	
			200 00
8th family:			
Tucker	51	600 00	
Viney	46	400 00	
Chaney	21	700 00	
Joe	15	1,200 00	
Peggy	14	900 00	
Vine	13	600 00	
Armstead	9	400 00	
			4,800 00
9th family:			
Lemuel	51	500 00	
Salina	45	500 00	
Norris	48	600 00	
Eliza W.	37	600 00	
Sim	8	450 00	
Loyd M.	5	350 00	
Ernest	3	200 00	
Mary Jane	1	100 00	
			3,300 00
755 10th family:			
Pompey	50	500 00	
Rozan	33	600 00	
			1,100 00
11th family:			
Will	47	600 00	
Fanny	49	500 00	
Willis	44	1,000 00	
Charity	39	200 00	
A. Jackson	17	1,100 00	
Minerva	13	850 00	
			4,250 00

ITEM 7TH.—*Slaves*—Continued.

	Years aged.	Appraised at—	Total.
12th family:			
Wm. Jordan	48	700 00	
Susan	37	800 00	
Margaret	16	1,000 00	
Mose	10	600 00	
			3,100 00
13th family:			
Dowie	41	1,200 00	
Sarah Ann	18	1,000 00	
Affa	61	50 00	
Juda	15	1,000 00	
Sarah	6	300 00	
Jane	3	250 00	
			3,800 00
14th family:			
Lucas	46	600 00	
Harriet	41	500 00	
William	16	1,200 00	
America	13	750 00	
Matilda	9	600 00	
Tenneper	7	500 00	
Randolph	2	5 00	
Isaac Irves	35	1,200 00	
Artemisia	33	800 00	
756 Charley	9	500 00	
Anthony	7	400 00	
			7,055 00
Edward	5	300 00	
Isaiah	½	100 00	
			400 00
15th family:			
Isham	31	1,100 00	
Phœbe	66	5 00	
Independence	11	500 00	
Sally Ann	5	300 00	
Letty	4	200 00	
Thornton	34	1,100 00	
Alsy	33	600 00	
			3,805 00
16th family:			
Thornton	34	950 00	
Abby	48	400 00	
Tom	13	1,000 00	
			2,350 00

ITEM 7TH.—*Slaves*—Continued.

	Years aged.	Appraised at—	Total.
17th family:			
Mose Davis	31	1,200 00	
Mary Graves	37	400 00	
Hampton	14	1,000 00	
Dick (has fits)	10	5 00	
Nelly	7	350 00	
Mary Eliza	3	200 00	
			3,155 00
18th family:			
Jeff. M.	33	1,000 00	
Rose T.	27	1,000 00	
Abby	9	400 00	
Anna	6	300 00	
Washington	3	200 00	
Cassy	1	100 00	
			3,000 00
757 19th family:			
Grandison	32	1,000 00	
Lucy Lee	57	100 00	
Adeline	31	800 00	
Beck	8	350 00	
Inda	6	250 00	
Jim Lee	3	200 00	
Mahala	------	100 00	
			2,800 00
20th family:			
Reuben	27	1,200 00	
Maria	23	900 00	
Lina	6	400 00	
Jim	5	300 00	
Cela (infant)	------	100 00	
			2,900 00
21st family:			
Albert	22	1,100 00	
Patience	24	1,000 00	
Willis	8	400 00	
Polly	4	300 00	
Henry	3	200 00	
Josiah	1	100 00	
			3,100 00
22nd family:			
Hilary	21	1,200 00	
Clarissa	22	1,000 00	
			2,200 00

ITEM 7th—*Slaves*—Continued.

	Years aged.	Appraised at—	Total.
23rd family:			
Harry, Jr.	37	1,800 00	
Catherine	34	800 00	
Charlotte	10	650 00	
Emily	7	400 00	
Carey	4	300 00	
Stephen	2	100 00	
			4,050 00
758 Robert	20	1,200 00	
Georgiana	21	1,000 00	
Alfred	3	200 00	
			2,400 00
Shelton	18	300 00	
Sopha	61	50 00	
Ann Word	41	900 00	
Ackey	54	50 00	
Franky	34	900 00	
Rachel	26	1,000 00	
Betsy	24	900 00	
Mary Ann	7	300 00	
Sally	4	200 00	
Lige	1	100 00	
Edward	2	100 00	
Lydia	46	50 00	
Cornelia	19	1,000 00	
Harriet H.	41	500 00	
			6,350 00
Total appraised value of slaves on Carondelet plantation			$79,920 00

ITEM 8TH.—*Horses, Mules, &c.*

53 head of horses and mules, appraised at		$125.00	$6,625 00
5 " cattle,	"	$10.00	50 00
36 cows and calves,	"	$7.00	252 00
4 yoke of oxen,	"	$75.00	300 00
3 head " hogs,	"	$10.00	30 00
Total appraised value of horses, mules, &c., on Carondelet plantation			$7,257 00

759 ITEM 9TH.—*Farming Utensils, &c.*

2 good wagons,	appraised at	$70.00	each --	$140 00
1 old "	"		--	40 00
1 pr. timber wheels,	"		--	250 00
1 old cart,	"		--	10 00
1 pr. timber wheels,	"		--	10 00
50 ploughs,	"	$2.50 "	--	125 00
18 large sweeps,	"	$3.00 "	--	54 00
25 small "	"	$2.00 "	--	50 00
15 harrows,	"	$3.00 "	--	45 00
6 cotton openers,	"	50c.	--	3 00
20 spades and shovels,	"	50c.	--	10 00
20 axes, app'd at 50c. ea.; 50 hoes,	"	25c. ea.	--	16 25
3 c.-cut saws,	"	$5.00	--	15 00
25 double-trees,	"	50c. ea.	--	12 50
50 single "	"	25c. "	--	12 50
Tools and sundries,	"		--	50 00
2 double scrapers,	"	$15.00 "	--	30 00
3 cotton planters,	"	$10.00 "	--	30 00
Household and kitchen furniture,	"		--	150 00
Total appraisement of farming utensils on Carondelet plantation				$913 25

ITEM 10TH.—*Crop and Supplies.*

6,000 bushels corn,	appr'd at	6–	per bush.	$4,500 00
20 tons fodder,	"	$20.00	per ton	400 00
172 bales cotton, pressed,	"	$25.00	" bale	4,300 00
30 " " not "	"	$25.00	" "	750 00
180 " " in the field,	"	$15.00	" "	2,700 00
44 barrels pork,	"	$16.00	" barrel	704 00
3 bales bagging,	"	$41.40	" bale	124 20
3 coils rope,	"	$9.60	" coil	28 80

760 Total appraised value of crop and supplies on Carondelet plantation $13,507 00

Recapitulation.

Item 6.—Land	$92,800 00
" 7.—Slaves	79,920 00
" 8.—Horses, mules, &c.	7,257 00
" 9.—Farming utensils	913 25
" 10.—Crops and supplies	13,507 00
	194,397 25
Total amount of Raleigh plantation	237,836 00
Amounting in total recapitulation to the sum of	432,233 25

Four hundred and thirty-two thousand two hundred and thirty-three $\frac{25}{100}$ dollars.

Thus done and inventoried at one sitting, without turning aside to other acts, in the presence of Silas Goodrich and Jacob C. Purdy, witnesses of lawful age, residing in this parish and State, who hereunto sign their names, together with the said appraisers and me, the said deputy recorder, on this the 12th day of December, A. D. 1860.

(Signed) J. B. BEARD.
SAM'L RICHARDSON.
(Signed) JAMES W. DRAUGHAN, *Recorder*,
Per CHARLES R. PURDY,
Deputy Recorder.

(Signed) SILAS GOODRICH.
J. C. PURDY.

Endorsed: Succession of James Railey. Inventory. Filed Jan'y 3rd, 1861. (Signed) J. L. Cheatham, clerk.

761 *J. G. Carson, Executor, in Account with the Estate of James Railey.*

DR.

1860.			
Dec.	27.	By proceeds of 200 bales cotton from the Raleigh plantation, sold by W. Cox and Co., per voucher A	5,433 51
1861.			
Jan.	1.	Sold Mrs. M. S. Railey 6 calves, at $10.00 each, and a top buggy, at $150.00 (this is to be in part payment for the hire of 6 negroes during the year 1861, at $150.00 per annum each)	210 00
Jan.	9.	By proceeds of 150 bales cotton from the Carondelet plantation, sold by Buckner, Stanton and Newman, voucher B	5,426 65
	17.	By proceeds of 50 bales cotton from the Carondelet plantation, sold by Buckner, Stanton and Newman, voucher C	1,671 90
	25.	B. I. D. Catlin's note, dated Jan. 25th, 1860, for $476.80, with one year's int., at 8 pr. ct., $38.14, transferred to I. T. Parker	514 90
Feb.	2.	By proceeds of 94 bales cotton from Raleigh, sold by W. Cox and Co., voucher D	2,910 43
	12.	By proceeds of 75 bales cotton from Raleigh, sold by W. Cox and Co., voucher E	2,229 38
	27.	Cash from G. A. Newman, blacksmith's bill for 1860 (Raleigh)	17 85
	28.	Cash from Mrs. E. Savage, blacksmith's bill for 1860 (Carondelet)	
Mar.	4.	By proceeds of 179 bales cotton from Carondelet, sold by Buckner, Stanton and Newman, voucher F	5,162 60
	9.	By proceeds of 109 bales cotton from Raleigh, sold by W. Cox and Co., voucher G	3,219 14

762	April 15. By W. W. Coke's note for $50.00, dated Nov. 9th, 1859, with int. to date, $4.39 (paid)		54 39
	Dec. —. Sold Mrs. M. S. Railey 1,316 bushels corn, at 75c. per bushel, in payment for picking 131,585 lbs. cotton, at 75c. per 100 lbs.		986 88
	1862.		
	Jan. —. Proceeds of 261,715 lbs. cotton seed, sold by steamer M E. Keene, voucher H		811 97
	April —. By 450 bushels corn, at 75c. per bushel, sold Mrs. M. E. R. Boyd; hire for negroes 27 months, at $12.50 per month		337 50
	By 300 bushels corn, at 75c. per bushel, sold Mrs. M. S. Railey in part payment for the hire of 6 negroes for 1861, at $150.00 per annum		225 00
			28,998 46
	Am't credits	28,823	

763 *J. G. Carson, Executor, in Account with the Estate of James Railey.*

CR.

	1860.		
	Dec. 22. Paid T. B. R. Hatch advertising appointment of executor in Providence Herald, voucher 1		7 00
	29. Acc't of W. Cox and Co. for insurance on gin and for rope and twine for Raleigh plantation, voucher 2		285 27
	1861.		
	Jan. 2. Paid Henry Goodrich general levee tax on Carondelet plantation, voucher 3		3,211 90
	3. Paid W. Craig money due negroes for work during holydays, voucher 4		450 00
	14. Acc't of Buckner, Stanton and Newman for insurance on gin and rope and twine (Carondelet), voucher 6		287 18
	10. Acc't of W. Cox and Co. for rope and twine, Raleigh, voucher 5		96 52
	17. Paid H. Goodrich general levee tax on Raleigh plantation, voucher 7		3,164 20
	19. Paid W. Craig balance due him, cash advance-, voucher 4		33 35
	21. Paid T. J. Parker for services as overseer on Raleigh during years 1859 and 1860, $20.00, vouchers 8 and 9		1,562 18
	22. Paid C. R. Purdy for taking inventory of estate of James Railey on Dec. 12th, 1860, voucher 10		250 00
	21. Acc't of Buckner, Stanton and Newman for bagging, rope, and twine for Carondelet, voucher 11		102 30

764	25.	J. T. Parker (credited on a note of J. Railey's for $1,666.75), J. D. Catlin's note (of Jan. 25th, 1860, with int., $38.14, with int.), $476.80, & int., $38.14, voucher 12	514 94
	26.	Paid W. Craig, as overseer on Carondelet plantation during 1859 and 1860, with one year's int. on wages of 1859, voucher 13	2,080 00
	26.	Acc't of W. Cox and Co., rope & twine for Raleigh, voucher 15	63 48
1861.			
Feb.	5.	Paid S. D. Oliver special levee tax on Raleigh and Carondelet plantations, voucher- 3 and 7	596 34
	12.	Paid E. F. Newman clerk's fees for J. L. Cheatham, $25.15, and P. W. De France, $6.81, voucher 16	31 96
	13.	Paid S. D. Oliver, State and parish taxes for 1860 on Raleigh and Carondelet plantations, voucher 17	1,308 28
	13.	Enclosed to Logan Railey (Versailles, Ky.) check on Bank of La., to his order, to pay funeral expenses of late James Railey, voucher 18	125 00
	11.	Paid J. C. Ermin for 8 bbls. lime bought for Raleigh, voucher 19	10 00
	25.	Paid H. Goodrich his account for 1860, voucher 20	766 25
March	5.	Paid P. H. Hanna, catching runaway negro, voucher 21	25 00
	14.	Freights paid by W. Cox & Co. on bagging, rope, and twine shipped Jan. 10th and 26th, voucher 22	10 85
765	28.	Paid Stark, Stauffer and Co. accounts, voucher 23	497 60
	"	Paid North, Duthre and Co. acc't, voucher 24	916 48
	"	Paid R. M. Curd (Thos. Hunt and Co.) for two of J. Railey's protested acceptances, payable at the counting-room of W. Cox and Co., one 13th Nov. for $2,976.12, with cost of protest & int., $3,037.01, & one 15th Nov. for $3,420.41, with int. & protest, $3,488.68, voucher 25	6,525 69
	"	Paid acc't of Railey and Campbell, voucher 26	897 83
April	1.	Paid Craig and Sterling, voucher 27	8 75
	2.	Paid S. E. O'Donnell, voucher 28	10 00
	"	Paid Rob't Howe, voucher 29	90 40
	"	Paid Stanton and Stockman in part, voucher 30	143 10
	"	Chamberlin and Smith, voucher 31	101 95
	8.	Jos. Carradines acc't for 1860 to Snyder and Lewis, att'ys, voucher 32	51 06

	11.	Paid J. C. Ermin 1 bbl. flour for Raleigh, voucher 33	7 25
May	4.	Paid bill of E. Cessor for services in 1860, voucher 34	30 25
	15.	For 1 bbl. flour	7 50
Aug.	1.	A. B. Reading and Bro., castings, 1860 & 1861, voucher 35	37 14
	14.	Chas. R. Railey, 10 bbls. molasses and freight, voucher 36	143 20
	18.	C. Randolph Railey for support of his family, voucher 37	250 00
766	19.	Mrs. M. E. R. Boyd for support of her family, voucher 38	450 00
	24.	Mrs. M. S. Railey, guardian of H. Otey Railey, for support of H. Otey Railey, voucher 39	150 00
Dec.	4.	Paid S. W. Davis for 45 head of beef cattle, voucher 40	1,687 50
	1.	1 bbl. flour	9 50
	13.	10 bbls. lime, by M. E. Keene, voucher 41	42 50
	23.	2 bbls. flour and 444 lbs. rice for negroes, voucher 42	49 86
	"	Garden seed	8 00
		Paid Mrs. M. S. Raily for picking 131,585 lbs. cotton (in 1860, at 75 cts. per 100 lbs.) in corn at 75 cts. per bushel, 1.316 bushels	986 88
1862.			
Feb.	18.	Paid J. C. Ermin in part for overseeing on Raleigh plantation during 1861, voucher 44	200 00
	19.	Paid Wm. Craig in part for overseeing on Carondelet plantation during 1861, voucher 45	200 00
767	M'ch 10.	Paid B. Norris for a gun for Raleigh plantation, voucher 46	35 00
April	—.	Paid Mrs. M. E. R. Boyd for the hire of negroes to pick cotton during 1861, 27 months at $12.50 per month; paid in corn at 75c. per bushel	337 50
"		Paid Mrs. M. S. Railey in part for the hire of 6 negroes for 1861 at $150.00 each per annum; paid in corn at 75c. per bushel, 300 bushels	225 00
"		3 bbls. lime for Carondelet	18 00
"		2 copies of Affleck's plantation books, 43	6 00
			$29,105 94
		To am't of commissions on the above sum administered and disbursed at 2½ per cent.	727 64
			$29,833 58
		By bal., as per *contra*	28,998 46
		Bal. due executor	$835 12

768 To the hon. the judge of the district court in and for the parish of Carroll and to the clerk of said court:

The petition of James G. Carson, testamentary executor of the last will and testament of James Railey, dec'd, represents—

That the within and foregoing is his annual account of administration of the property of James Railey, dec'd, for the last year; that it will appear by reference to the same that there is a balance of eight hundred and thirty-five $\frac{11}{100}$ dollars due your petitioner.

Petitioner attaches hereto a separate voucher for each and every item of both sides of said account, and prays that they may be received in support of and to be a part of the same.

Wherefore petitioner prays that said account may be received, confirmed, and honologated, and for general relief in the premises; and, further, that a counsel of absent heirs may be appointed to represent the heirs of said Railey, and that said account be contradictorily settled with him.

(Signed) SPARROW AND MONTGOMERY, *Att'ys.*

769 Upon reading and considering the foregoing petition, it is ordered that legal notice be given of the filing of said account, and after the expiration of the legal delays, if no opposition is made, let said account be approved and homologated as prayed for; also let J. H. Kilpatrick, att'y-at-law, be appointed as counsel of absent heirs in the adjustment of the foregoing account.

Parish of Carroll, La., July the 17th, 1862.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

I hereby accept the appointment of attorney of absent heirs in the settlement of the foregoing account.

This 17th day of July, A. D. 1862.

(Signed) J. H. KILPATRICK.

Notice.

James G. Carson, executor of the succession of the late James Railey, dec'd, has filed an account of his executorship of said succession. If no opposition is made thereto on or before the first Saturday in September next said account will be approved and homologated.

Parish of Carroll, La., July 17th, 1862.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

I have examined the within account and vouchers and make no opposition to the same.

August 28th, 1862.

(Signed) J. H. KILPATRICK,
Att'y for Absent Heirs.

770 Endorsed: Petition, ac., and vouchers. Filed July 17th, 1862. (Signed) John L. Cheatham, clerk.

Final account of the administration of Dr. James G. Carson, executor of the last will and testament of James Railey, rendered for the succession of said Carson by Mrs. Catherine Carson, ex'x, Dr.

The executor is charged as *as* debtor for the following items:

Nov. 28, 1862.	To proceeds of 11,578 bushels corn taken by Confederate military authorities, for which they paid him @ 50c. Confederate money	$5,789 00
" " "	41,950 bundles fodder taken by Confederate military, for which they allowed ex'r $1.00 per hundred in Confederate money	419 50
" " "	proceeds 211 bales cotton taken by Confederate government, for which he received in Confederate bonds	8,636 82
" " "	proceeds 233 bales cotton taken by the Confederate government, for which he was allowed in Confederate bonds	9,262 93
		$24,108 25

The balance of the crops were destroyed by order of the Confederate military commanders, and the sums so received as above
771 were disbursed in expenses of the est. of James Raily as per *contra.*

The executor is entitled to credit for the following items paid out and expended in behalf of the est. of James Railey, deceased:

1862.				
Nov.	22.	By am't paid clerk's costs, as per voucher No. 1		$15 60
"	"	By am't of clerk's costs, as per voucher No. 2		10 00
"	29.	" H. B. Tibbetts for beef cattle	Voucher 4	11 98
	22.	" am't p'd clerk of court for fee of att'y of absent heirs	Voucher 3	10 00
Dec.	16.	" W. A. Thorp, beef cattle	" 5	3,487 50
"	28.	" I. B. Beard, 688 bushels corn	" 6	516 00
"	"	" T. F. Oliver for 12 beef cattle	" 7	617 35
1863.				
Jan.	10.	By Wm. Craig for overseeing	" 8	864 00
"	"	" T. F. Gaddis for beef cattle	" 9	1,632 83
"	23.	" R. C. McGehee for services rendered, as per voucher 10		60 00
"	"	" Mrs. A. S. Stone for pork	Voucher 11	400 00
Feb.	7.	" James C. Massie, 500 bus. corn	" 12	3,750 00
"	25.	" Sam'l Templeton for corn	" 13	1,500 00
"	"	" T. F. Oliver 10% discount in exchanging Confederate bonds for bills to use for est.	Voucher 14	300 00
"	28.	" I. C. Ermin, overseer's wages for 1861, Voucher 15		869 33
"	"	" R. C. McGehee for services in removing property	Voucher 16	400 00

772	April 16. By R. C. McGehee for services in removing property---------- Voucher 17		140 00
	April 10. By taxes for Carondelet place---- " 18		639 40
	" " " " Raleigh place---------- " 19		736 71
	" " Am't p'd I. W. McClendon for services in removing property - Voucher 20		212 20
	" " By am't p'd J. C. Drew for corn - " 21		1,198 35
	" " " " " Dr. Davis for medicine & hauling ---------- Voucher 22		140 00
	" " " " " S. D. Oliver for cotton cards, Voucher 23----------		270 00
	" " " " " S. E. Lester for ferriage, Voucher 24----------		30 00
	" " " " " C. B. Richardson for corn, Voucher 25----------		325 00
	" " " " " E. Graves, jailer's fees - Voucher 26		17 00
	" " " " " Thos. Maddox bill for work on mill ---------- Voucher 27		44 00
	" " " " " H. Gerson & Co. bill for osnabergs---------- Voucher 28		1,117 20
	" " " " " invoice molasses, &c.- " 29		151 72
	" " due executor, as per acc't rendered by Jackson Morley, for expenses in removing property from near Federal lines, @ $7.52 per head for each negroe, Voucher 30----------		2,110 30
	By cash advanced, as per acc't & receipt of Wm. Craig---------- Voucher 31		400 00
	Am't paid out for expenses incurred by I. C. Ermin, overseer, in removing negroes, at $8.05 per head ---------- Voucher 32		3,298 84
	Am't of cash advanced to Wm. Craig to defray expenses in removing property - Voucher 33		1,074 00
			$27,534 11
773	To am't bro't forward ----------	24,108 25	
	" " cash received, as per voucher 33, above--	440 40	
	To am't cash for 487 ft. lumber----------	12 17	
	" " " received upon voucher 31, above----------	25 25	
	" " " for bagging & iron sold I. B. Beard - ----	145 60	
	" " profits on making salt at Lake Bristeneau-----	1,911 96	
			$26,643 23
	By am't bro't down ----------		$27,534 11
	To " " " ----------		26,643 23
	Bal. due ex'r in Confederate money ----------		$890 88

The items of the foregoing were founded — Confederate money; the following items are founded on lawful currency:

By bal., as per acc't rendered on file in court	727	64
" commissions on the inventory, at 2½ %	10,805	00
Am't due ex'r	$11,532	64

Statement of debt which the executor incurred for the estate and which is unpaid, but which accountant asks to be allowed and paid by the est. of James Railey, dec'd, as part of the expenses of administration, including charge for this acc't.

Amount due Sparrow and Montgomery, att'ys, for probating the last will and testament, opening the succession, superintend-
774 ing the taking of the inventory, consultations with and general advice to executor, rendering the acc't now on file and allowed, and for filing this account and professional services in conducting the same to final settlement (the inventory being $432,238.00), $6,000.00.

Endorsed: Estate of James Railey, dec'd. Final acc't of the administration of Dr. James G. Carson, executor. Filed Nov. 10th, 1862. (Signed) J. L. Cheatham, clerk.

775 *Petition for Homologation of Ac.*

To the hon. the judge of the district court in and for the parish of Carroll:

The petition of Mrs. Catherine Carson, testamentary executrix of the last will of Dr. James G. Carson, shews that on the — day of —— Dr. James G. Carson was duly qualified and confirmed as testamentary executor of the last will and testament of James Railey; that on the 17th July, 1862, the said executor filed an annual account of his administration in your hon. court and which has been, after due and legal delays and notices, allowed and homologated.

That he continued to administer said estate until the approach of the Federal army made it unsafe to keep the slaves and movable property on the premises, and, therefore, under the advice of the counsel, who represented him for the benefit of the estate, he removed said property to the State of Texas, where he had removed his own property; that whilst there nothing more than a support for the slaves was made.

That subsequent to the account so filed but small crops were made by the estate on account of the disturbed condition of the country consequent upon the war existing; that parts of the
776 crops that were made were taken by the Confederate authorities, for which he was allowed and compelled by them to receive Confederate money and bonds, and a larger portion of the crops were by them destroyed; that the said Confederate money and bonds were expended for the benefit of the estate, as shown in the account which is annexed and rendered in behalf of said executor;

that said executor employed as counsel to represent him and said estate Messrs. Sparrow and Montgomery, attorneys-at-law; that for their services rendered to said executor and said estate a statement of their claims and charges, including the claim for rendering this final account, is made, and which petitioner prays may be allowed and paid as part of the expenses of administration.

And petitioner further prays that said account may be allowed and homologated by a judgment of the court, and that a counsel of absent heirs be appointed to represent the heirs, Mrs. F. W. Boyd, Charles and Otey Railey, all of whom are absent, and contradictorily with whom said account may be adjudicated upon after due notice to him, said counsel.

Prays for general relief in the premises.

(Signed) SPARROW AND MONTGOMERY, *Att'ys.*

777 Upon considering the foregoing petition and account annexed it is ordered that legal notice be given of the filing of said account, and after the expiration of the legal delays, if no opposition is made, let said account be approved and homologated as prayed for; it is further ordered that Charles A. De France, att'y-at-law, be appointed counsel of absent heirs of said succession, to wit, for Mrs. F. W. Boyd and Charles and Otey Railey, non-residents of this State.

Parish of Carroll, La., Jan. 5th, 1867.

(Signed) J. L. CHEATHAM,
District Clerk.

I do solemnly swear that I will faithfully perform and discharge all the duties incumbent on me as counsel of absent heirs in the succession of James Railey to the best of my knowledge and ability, "so help me God."

(Signed) C. A. DE FRANCE.

Sworn to and subscribed before me this 5th day of Jan., 1867.

(Signed) J. L. CHEATHAM, *Clerk.*

Notice.

Mrs. Catherine Carson has filed a final account of the administration of her late husband, Dr. James G. Carson, dec'd, in the matter of the succession of the late James Railey, deceased. If no
778 opposition is made thereto on or before the first Saturday of March next said account will be approved and homologated.

Parish of Carroll, La., Jan. 5th, 1867.

(Signed) J L. CHEATHAM,
Clerk District Court.

Judgment of Homologation.

By reason of the law and evidence, and by further reason of no opposition having been made, it is, therefore, ordered, adjudged, and decreed that the annexed final account of Mrs. Catherine Carson of

the acts and doings of her late husband, James G. Carson, as executor of the succession of the late James Railey, deceased, be, and the same is hereby, approved and homologated.

Done and signed this the 2nd day of February, A. D. 1867, at clerk's office, parish of Carroll, Louisiana.

(Signed) J. L. CHEATHAM,
Clerk District Court.

Endorsed: Est. James Railey. Petition for homologation of final ac. of executor. Filed Nov. 10th, 1866. (Signed) J. L. Cheatham, clerk.

779 *Application and Appointment of F. W. Boyd Dative Test. Executor.*

To the hon. the judge of the district court of Carroll parish, Louisiana:

The undersigned, husband of Mary E. R. Boyd, the only surviving daughter of the late James Railey, at the request and in the behalf of his said wife and the other heirs of the said decedent, and by the advice and consent of several large creditors of the said James Railey, prays the hon. district court of Carroll parish that he may be appointed executor (or administrator) to the succession of said James Railey, and begs to submit the following statement to the consideration of the honorable court:

James Railey, above mentioned, died in A. D. 1860, leaving by his will James G. Carson, M. D., his executor; said Carson accepted the trust and entered upon the duties and took possession of the succession, and continued to hold possession until his death, in 1863, since which time the widow of said Carson has acted as executrix, but without appointment or authority of law. The said widow Carson desires to be relieved from all care of or connection with said succession, and your petitioner is the only male member of the family or connection interested in said succession who is
780 competent or deemed to be so to assume and discharge the duties involved in and pertaining to such succession.

Such petitioner further states that he became the lessee from the U. States Government of the Raleigh plantation, which is a part of the succession referred to in this petition, after having made strenuous but ineffectual efforts to have relinquished to the estate of James Railey by the Federal Government, and that he intends to reside upon it with his family as soon as circumstances will allow. He was prevented from occupying and cultivating the said plantation this season, as he obtained the lease too late for this year's planting. He considers it his domicil and made every possible effort to stock and work it this season, and only sickness in his family has prevented their occupancy of it up to this present time. As it is the portion *portion* of said succession devised to Mary E. R. Boyd, the wife of said petitioner—

Your petitioner further prays that the bond may be made as light as possible, as there is very little property, except land, to be ad-

ministered upon, and that is always safe, and no bond whatever has thus far been given or required in the management of said succession.

Hoping the favorable consideration of your honorable court, your petitioner will ever pray, &c.

Vicksburg, Miss., August 7th, 1865.

(Signed) F. W. BOYD (D. D).

781 Upon reading and considering the foregoing petition, it is ordered that legal notice be given of the petitioner's application, and after the expiration of the legal delays, if no opposition be made, let the petitioner be appointed dative testamentary executor of said succession, upon complying with the law in such case made and provided.

Parish of Carroll, La., August 30th, A. D. 1865.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

Notice.

F. W. Boyd has applied for the dative testamentary executorship of the succession of the late James Railey, dec'd. If no opposition is made thereto within ten days from the date hereof the applicant will be appointed.

Parish of Carroll, La., Aug't 30th, A. D. 1865.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

By reason of the law and evidence and by further reason of the legal notices having been given and the expiration of the legal delays, and no opposition having been made, it is therefore ordered, adjudged, and decreed that Frederick W. Boyd be, and he is hereby, appointed dative testamentary executor of the last will and testament of the late James Railey, dec'd.

Done and signed at clerk's office, parish of Carroll, La., this 28th day of September, A. D. 1865.

(Signed) J. L. CHEATHAM,
Clerk District Court.

782 Endorsed: Succession of James Railey, dec'd. Application of F. W. Boyd. Filed Aug. 30th, 1865. (Signed) J. Cheatham, clerk.

Know all men by these presents that we, Frederick W. Boyd, as principal, a resident of the parish of Carroll, State of Louisiana, and William M. Deeson, a resident of said parish and State, as surety, are held and firmly bound unto Edgar D. Farrar, judge of the thirteenth judicial district court in and for the parish of Carroll, Louisiana, in the sum of thirty thousand ($30,000) dollars; for the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents this the 28th day of September, A. D. 1865.

The condition of the above obligation is this: That whereas the above-bound Frederick W. Boyd has this day been appointed by said court as dative testamentary executor upon the succession of the late James Railey, of said parish:

Now, if the said Boyd shall well and truly administer the property, rights, and credits of said succession as the law directs, and render a true and correct account thereof in the time and manner pointed out by the statutes of the State or whenever thereunto legally required so to do, and the said account shall be *only*
783 approved and homologated by said court, then the above obligation to be null and void; otherwise to remain in full force.

(Signed) F. W. BOYD.
W. M. DEESON.

(Endorsed:) Succession of James Railey. Bond of dative testamentary ex'r. Filed Sept. 28th, 1865. (Signed) J. L. Cheatham, clerk.

Oath of Executor.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I, Frederick W Boyd, do solemnly swear that I will faithfully and impartially perform and discharge all the duties incumbent on me as dative testamentary executor of the last will and testament of the late James Railey to the best of my ability and understanding, "so help me God."

(Signed) F. W. BOYD.

Sworn and subscribed before me this 28th day of Sept., A. D. 1865.

(Signed) J. L. CHEATHAM, *Clerk.*

Letters.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

Be it known and remembered that whereas the Rev. Frederick W. Boyd has been appointed dative testamentary executor of
784 the last will and testament of the late James Railey, and having taken the oath required by law and given bond with solvent security, he is, therefore, fully authorized and empowered to perform and discharge all the duties of said appointment.

Given under my hand and seal of office this the 28th day of Sept., A. D. 1865.

[SEAL.] (Signed) J. L. CHEATHAM, *Clerk.*

To the hon. judge of the 13th judicial district court in and for the parish of Carroll, La.:

The petition of F. W. Boyd, a resident of your said parish and State, the duly appointed and qualified dative testamentary executor

of the last will and testament of James Railey, of your said parish and State, represents that in the fall of the year 1860 James G. Carson, of said parish, was duly appointed and confirmed as testamentary executor of said Railey; that immediately upon and after his appointment he caused and inventory of said succession to be made; that during the year 1864 said Carson departed this life, leaving no one duly authorized to represent said succession, and that your petitioner has applied for and been duly appointed dative testamentary executor thereupon.

785 Wherefore petitioner prays that an order be issued to James W. Draughan, recorder of your said parish, authorizing and requiring him to make an inventory and appointment of whatever property, rights, and credits there may be left belonging to said succession, and for general relief in the premises.

(Signed) F. W. BOYD,
In Propria Persona.

Endorsed: Succession of James Railey. Application for inventory. Filed Sept. 28th, 1865. (Signed) J. L. Cheatham, clerk.

To the hon. judge of the 13th judicial district, holding sessions in and for the parish of Carroll, State of Louisiana:

The petition of Frederick W. Boyd, administrator of the estate of James Railey, deceased, respectfully represents that more than one year has elapsed since an inventory and appraisement has been made; that no inventory and appraisement has been taken since the appointment of your petitioner as administrator.

That, with the view of protecting your petitioner and the interest of all concerned, it is necessary that a new inventory and appraisement be made.

Wherefore your petitioner prays for an order to that effect requiring the recorder of the parish of Carroll or any person au-
786 thorized by law to perform such act to take an inventory and appraisement of all the property or effects found in or belonging to the succession of deceased, James Railey.

(Signed) GEO. S. LACY, *Att'y.*
GOODRICH AND PILCHER, *Atty's.*

Order.

Upon reading and considering the foregoing petition it is ordered that a commission issue to James W. Draughan, recorder, requiring him to make an inventory and appraisement of all the property and effects, rights and credits, belonging to the succession of James Railey, deceased.

Parish of Carrol, La., Oct'r 27th, 1865.

(Signed) J. L. CHEATHAM,
Clerk District Court.

Endorsed: 13th district court, parish of Carroll. In the succession of James Railey. Petition for inventory, &c.

Inventory.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that in pursuance of a commission to me directed from the office of the clerk of the 13th judicial district court in and for the parish of Carroll, State of Louisiana, authorizing and requiring me to make an inventory and ap-
787 praisement, estimative and descriptive, of all the property and effects, rights and credits, belonging to the succession of the late James Railey, deceased, and due return make—

I, James B. Bradford, a notary public and deputy recorder in and for the parish of Carroll, Louisiana, duly commissioned and sworn, at my office, — the town of Lake Providence, parish and State aforesaid, did proceed to take said inventory and cause said inventory to be made by appointing David L. Morgan and George G. Wilson, both residents of said parish and State, to act as appraisers, to whom I administered the following oath, to wit:

STATE OF LOUISIANA, *Parish of Carroll:*

We do, each of us, solemnly swear that we will a correct appraisement make and a true cash value place upon all and singular the property and effects, rights and credits, of and belonging to the succession of the late James Railey, deceased, which may be submitted to us for our decision, "so help us God."

(Signed) D. L. MORGAN.
GEO. G. WILSON.

Sworn to and subscribed before me July 16th, 1866.

(Signed) J. B. BRADFORD,
Deputy Recorder.

Whereupon we proceeded, in the presence of the witnesses hereinafter named, to make the following inventory and appraisement, to wit:

788 *Inventory.*

ITEM 1.—*Lands and Lots of Ground.*

A certain tract of land, known as the Raleigh plantation, lying and being situate upon the Mississippi river, in Tompkins' bend, within the said parish of Carroll, bounded on the north by the lands of Mrs. Elizabeth Savage, on the south by the lands of the estate of Jonathan Morgan, dec'd, and upon the east by the Mississippi river, containing seventeen hundred and thirty-nine acres, more or less, appraised at, per acre, $55.00	$95,645 00
A certain other tract of land, known as the Carondelet plantation and lying west of the same, containing eleven hundred and sixty (1,160) acres, more or less, appraised at, per acre, $45.00	52,200 00
	$147,845 00

ITEM 2.—*Personal Property.*

Eighteen (18) mules, appraised at, per head, $100.00	$1,800 00
Twenty head of horned cattle, appraised at, per head, $10.00	200 00
	$2,000 00

Recapitulation.

Item 1. Land	$147,845 00
" 2. Personal property	2,000 00
	$149,845 00

Amounting in total recapitulation to the sum of one hundred and forty-nine thousand and eight hundred and forty-five dollars.

789 This done and inventoried at one sitting, without turning aside to other acts, in the presence of Rob't H. Bradford and Ferd. M. Goodrich, witnesses of lawful age, residing in said parish and State, who hereunto sign their names, together with said appraisers and me, deputy recorder, on this the sixteenth day of July, A. D. 1866.

(Signed) D. L. MORGAN.
GEO. G. WILSON.
F. W. BOYD.

Attest: ROB'T H. BRADFORD.
FERD. M. GOODRICH.

THOS. D. McCANDLESS, *Recorder*,
By J. B. BRADFORD, *Deputy* "

Endorsed: Succession of James Railey. Process verbal 39 of inventory and appraisement. Filed Sept'r 13th, 1886. (Signed) J. L. Cheatham, clerk, by J. B. Bradford, dep'ty recorder. $50, p'd.

790 *Application of Wm. Craig and Jas. C. Erwin, Creditors, Praying for Rule, &c., Upon Executor.*

SUCCESSION OF JAMES RAILEY.

To the hon. the judge of the 13th judicial district of the State of Louisiana in and for the parish of Carroll:

William Craig and James C. Erwin, who reside in this parish, respectfully show that they are creditors of the succession of James Railey, deceased; said succession owes William Craig nine thousand three hundred and forty-six $\frac{63}{100}$ dollars, with eight per cent. per annum interest from the first day of January, A. D. 1860, until paid, subject to a credit of ten hundred and eighty dollars, paid on the 26th day of January, A. D. 1861, and in the further sum of one thousand dollars, with eight per centum-per annum interest from the first day of January, A. D. 1863, until paid; that said succession owes James C. Erwin one thousand dollars, with eight per cent. per annum interest from the first day of January, A. D. 1863, until paid;

shows that said succession has been opened in this parish and that Frederick W. Boyd is dative testamentary executor of the same; that their said claims have been presented to said executor and have been accepted and acknowledged as just claims against said succession; wherefore they pray that a rule be granted them against
791 said executor ordering him to file an account showing the amount of funds of said succession now on hand within the legal delay; that upon his failure to answer said rule, or in the event of his not exhibiting in his hands funds sufficient to pay said claims, that the rule be made absolute, and that an order of sale issue to the sheriff of this parish to sell, in accordance with law, a sufficient amount of the property of said succession of James Railey, deceased, as appears, on the inventory of the same, to pay said claims, interest, and costs.

They further pray that the said executor, Frederick W. Boyd, be served with a notice hereof, and for all other orders or notices necessary in the premises.

(Signed) DUNCAN AND NEWMAN,
Att'ys for Pl'ffs.

Order.

Upon considering the foregoing application it is ordered that Frederick W. Boyd, dative executor of the succession of the late James Railey, deceased, do file an account of his acts and doings as executor aforesaid within ten days from the service hereof and according to law.

Parish of Carroll, La., March 23rd, 1867.

(Signed) JOHN L. CHEATHAM,
Clerk District Court.

792 Endorsed: Succession of James Railey. Application of Wm. Craig and J. C. Erwin, creditors, praying for rule, &c., upon executor, &c. Filed March 18th, 1867. (Signed) Rob't J. Landen, d'y cl'k.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

CRAIG and ERWIN
vs.
SUCCESSION JAMES RAILEY. } 5367.

To Frederick W. Boyd, executor, residing in said Parish and State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said William Craig and James C. Erwin, a duly certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of said court, held at Floyd, in said parish, within fourteen days after service hereof and according to law.

Witness the Honorable Edgar D. Farrar, judge of the said court,

and the seal of the said court, this the 23rd day of March, in the year of our Lord 1867.

(Signed) J. L. CHEATHAM, *Clerk*,
Per ROB'T J. LANDEN, *Dep. Clerk*.

Delivered March 23rd, '67.

Return.

793 Received, Floyd, Carroll parish, Louisiana, March 23rd, A. D. 1867, the within citation, together with a certified copy hereof and a certified copy of plaintiffs' petition, and on the 27th day of the same month and year served said copy by handing the same to Frederick W. Boyd, Jr., a free white person above the age of 14 years, at and residing at the residence of the within-named Frederick W. Boyd, executor, in said parish and State, he being absent from home at the time of service hereof, as ascertained by interrogating the said F. W. Boyd, Jr.

(Signed) W. W. COLLINS, *Sh'ff*,
By C. A. HEDRICH, *Dep. Sh'ff*.

Endorsed: 5567. Citation. W. W. Collins, sh'ff, serving a copy and citation, 100, mileage, by water, 6–7. Returned and filed April 1, '67. (Signed) Rob't J. Landen, dep. clerk.

Petition for an Injunction to Stay Illegal Tax Sale at Raleigh.

To the judge of the district court in and for the parish of Carroll, State of Louisiana:

The petition of the succession of James Railey, which has been opened in your honorable court and represented by F. W. Boyd, administrator, shows—

794 That on the — day of January, 1868, the sheriff of this parish, W. W. Collins, acting as the State and parish tax collector, seized, or caused to be seized, the following mentioned property of said succession, to wit, 25 bales of cotton, 18 mules, 2 wagons, 15 plows, 3 sweeps, 6 scrapers, and three cows and calves, which property he has advertised for sale at the door of the court-house on the 15th day of February, 1868.

Petitioner shows that the formalities of law have not been complied with by said sheriff in the proceedings had for the purpose of collecting said taxes; that no proper legal notices have been served as required by law; that said sheriff has shipped said cotton to his merchants in New Orleans, and the same has not yet been accounted for, although it is advertised to be sold at the court-house door as aforesaid; that a part of the property seized is still on the premises and not in possession of said sheriff; that the said mules were taken from the premises when there was abundant provender to subsist them on and carried away, whither petitioner does not know, and whereby heavy and useless expense will be incurred and charged for their keeping and starving. Petitioner shows that the conduct of said sheriff in said proceedings has been illegal, oppressive,

795 and extortionate; that great wrong and injustice has been done to your petitioner thereby, and that by reason of his said abuse of the powers in him vested by law and of his illegal and oppressive proceedings he is liable in damages to petitioner in the sum of one thousand dollars; that unless restrained by order of your said court irreparable injury will be done your petitioner.

Petitioner further shows that he has been informed and believes that the plantation belonging to said succession was, during the years 1864 and 1865, in the charge of the bureau of abandoned lands, and, so far as he has been able to ascertain, has never been released therefrom.

That the district judge is absent from the parish.

Wherefore petitioner prays that the said sheriff and tax collector be cited, that a writ of injunction issue restraining, from proceeding with said sale; that after due hearing said injunction may be made perpetual, and that petitioner have judgment for said damages and general relief, &c.

(Signed) SPARROW AND MONTGOMERY, *Att'ys.*

F. W. Boyd, Jr., agent for plaintiff in this suit, being sworn, says the facts set forth in the foregoing petition are true and cor-
796 rect, to the best of his knowledge and belief.

(Signed) F. W. BOYD, JR.

Sworn to and subscribed before me this 10th day of February, 1868.

(Signed) THOS. B. RHODES,
Justice of the Peace.

Endorsed: Succession of James Railey, dec'd, *vs.* W. W. Collins, sh'ff and tax collector. Petition for an injunction to stay illegal tax sale at Raleigh.

District Court. Parish of Carroll.

SUCCESSION OF JAMES RAILEY, Dec'd,
vs.
W. W. COLLINS, Sh'ff and Tax Collector.

Know all men by these presents that we, F. W. Boyd, adm'r for said succession, as principal, and H. Goodrich, as sureties, are held and bound unto the defendant in the above-entitled cause in the sum of — dollars, to the amount whereof we hereby bind ourselves this — day of February, 1868. The condition of this obligation is such that whereas the pl'ff in said suit has this day sued out an injunction against the defendant, and if it shall be decided that said injunction was wrongfully obtained and the above-bound
797 parties shall pay all such damages as may *may* be awarded against the said pl'ff, then this obligation shall be null and void; otherwise in full force.

(Signed) F. W. BOYD, *Adm'r.*
F. W. BOYD, *Agent.*
H. GOODRICH.

Endorsed: Succession of James Railey *vs.* W. W. Collins, sh'ff and tax collector. Bond, — Feb'y, 1868, to *to* stay tax sale.

Application of W. G. Wyley for Monition, &c.

To the honorable the judge of the parish court in and for the parish of Carroll:

The petition of William G. Wyley, residing in said parish and State, with respect shows that on the 20th of Oct., 1868, he became the purchaser of a plantation situated on the Mississippi river, in this parish, known as the "Raleigh" plantation, sold at the succession sale of James Railey, dec'd; said plantation, is situated about 16 miles below Lake Providence, in this parish, and bounded on the front by the Mississippi river, in the rear by lands of I. B. Beard, on the left or above by lands of T. W. Lilley or Salem plantation, and on the lower side by lands of the succession of Jonathan Morgan, dec'd, containing about 1,600 acres, more or less.

798 Petitioner shows that at the offering as aforesaid he became the purchaser of said plantation for the price and sum of twenty-five hundred and thirty-three $\frac{65}{100}$ dollars cash, paid upon the spot to the legal representative of said succession, and thereupon Charles R. Egelly, administrator of said succession, made petitioner a deed of sale to said plantation by authentic or public act, and in every respect according to law. Petitioner shows that he is an innocent third purchaser and adjudicatee of this property, and has paid up in cash the amount of his bid, and has the titles as aforesaid, but for the purpose of quieting his titles he is anxious to sue out a monition to confirm his titles.

Petitioner shows that the writ of sale issued from this honorable court under and by virtue of which said plantation was sold, and he is anxious to have a writ of monition to issue from this honorable court, and after legal delay to have his said titles quieted by a decree of homologation.

Wherefore petitioner prays that a writ of monition issue according to law, and after legal delays and legal advertisements, that his titles in and to said plantation be confirmed and homologated and he be quieted in his possession; prays for general relief.

(Signed) W. G. WYLEY,
In Propria Persona.

799 STATE OF LOUISIANA, *Parish of Carroll:*

Having carefully considered the foregoing petition, and by reason of the law being in favor of the petitioner, it is ordered that a writ of monition do issue, and after legal delays, if no opposition is made, that his titles be homologated. Let petitioner's prayer be granted according to law.

Read and signed at chambers, in the parish and State aforesaid, this 31st day of October, A. D. 1868.

(Signed) GEO. C. BENHAM,
Parish Judge.

Endorsed: W. G. Wyley *vs.* Suc. James Railey. Application for monition. Parish court. Filed Oct. 31st, 1868. (Signed) R. J. Landen, d'y clerk. Good for costs. Wyley.

W. G. WYLEY *vs.* SUCCESSION OF JAMES RAILEY.

Plaintiff offers us in evidence the writ of sale, the process verbal of the sheriff thereon, the petition of Charles R. Egelly for administration, and the inventory made on the 4th of September, A. D. 1865, and all the mortuary papers in the succession; also offers the
800 advertisement in the Elton Eagle, extending from the 14th of November, 1868, to the 1st of January, 1869.

I hereby certify that the foregoing is all the evidence offered in the trial of the above-styled suit.

Given under my hand officially this the 4th day of January, A. D 1869.

(Signed) R. K. ANDERSON, *Clerk*,
By R. J. LANDEN, *D'p'y Clerk*.

Endorsed: W. G. Wyley *vs.* Suc. Jas. Railey. Filed June 4th, 1868. (Signed) R. J. Landen, d'y clerk.

Monition and Judgement of Homologation.

Parish Court in and for Parish of Carroll.

In the Matter of the Succession of JAMES RAILEY, Dec'd.

Whereas Wm. G. Wyley has this day filed in this office his petition praying for the homologation of his titles, and that a monition may issue calling on all persons to show cause, if any they have, within thirty days after legal advertisement why said monition should not be approved and homologated by our said court
801 and he quieted in his titles to the following property, to wit:

A certain plantation known as the "Raleigh" plantation, situated in this parish, about 16 miles below the town of Lake Providence, and bounded in front by the Mississippi river, in the rear by the lands of I. B. Beard, on the left as above by the lands of T. W. Lilly or "Salem" plantation, and on the lower side by the lands of the succession of Jonathan Morgan, dec'd, containing about 1,600 acres, more or less, with all the improvements thereon, being the same property purchased by him at succession sale of the succession of James Railey, dec'd, on the 20th of Oct., 1868, for the price and sum of twenty-five hundred and thirty-three $\frac{5}{100}$ dollars, cash paid upon the spot; said Wyley, being the last and highest bidder, became the purchaser of said property, and the same was adjudicated to him for the price aforesaid:

Now, therefore, I, John L. Cheatham, clerk, of the thirteenth district court of the parish of Carroll and *ex officio* clerk of the parish court, do grant this monition in the name of the State of Louisiana, calling upon all persons who can set up any titles and rights to said property, in consequence of informalities in the orders,

decrees, or judgments of the court under which said sale was made, or any irregularities in the seizure, appraisements, time, and manner of sale, the advertisement, or from any other defect whatever,
802 to show cause within thirty days from the day of the judicial publication of this monition why the sale so made should not be confirmed and homologated and W. G. Wyley quieted in his possession and titles to said property.

Witness the Honorable George C. Benham, judge of the parish court in and for the parish of Carroll, Louisiana, and the seal of our said court, this 31st day of of Oct., 1868.

Judgment.

By reason of the law and the evidence being in favor of plaintiff and against the defendants, and by further reason of the within monition being duly granted and duly advertised in the Elton Eagle, the official journal of the parish of Carroll, La., for more than thirty days, and no opposition being made thereto, and on due proof being made in open court of the allegations of plaintiff, it is hereby ordered that plaintiff, W. G. Wyley, do have judgment of homologation and his titles to the lands bought at the succession sale of James Railey be confirmed and homologated, and that he be quieted in his title and possession to the following-described property, to wit: A plantation known as the "Raleigh" plantation, situated in this parish, on the Mississippi river, purchased by him at the succession sale of James Railey, deceased, situated about 16
803 miles below Lake Providence, bounded on the front by the Mississippi river, in the rear by the lands of I. B. Beard, on the left or above by the lands of T. W. Lilly or "Salem" plantation, and on the lower side by the lands of the succession of Jonathan Morgan, deceased, containing about 1,600 acres, more or less.

It is ordered that the sale so made be confirmed and homologated.

Read and signed in open court this 5th January, 1869.

(Signed) C. A. De FRANCE,
Parish Judge.

Endorsed: Succession of James Railey. Monition and judgm't of homologation. Filed Jan'y 5th, 1869. (Signed) R. J. Landen, d'y cl'k.

804 State of Louisiana, *Parish of East Carroll:*

Clerk's Office of the 8th Judicial District Court.

I hereby certify that the foregoing sixty-five pages contain a true, correct, and complete transcript of all the papers and documents filed in this office in the succession of James Railey, dec'd, from the probating of the will of said Raily and the opening of said succession under James G. Carson, as executor, down to the time (July 16, 1868) of the application of Chas. R. Egelly for the administration, excepting the vouchers filed during the administration of said Carson, ex'r.

Witness my hand and the seal of said court this the 28th day of July, A. D. 1882.

[SEAL.] F. H. G. TAYLOR,
Deputy Clerk.

805 EXHIBIT "Z." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants August 2nd, 1882. Filed August 2nd, 1882.

(Endorsed:) Mary E. R. Boyd *vs.* W. G. Wyly *et al.* Exception and protest of respondent.

Circuit Court of the United States of America for the Fifth Circuit, Western District of Louisiana, Holding Sessions in the City of Monroe. June Term, A. D. 1882.

FRIDAY, *the 30th day of June*, 1882.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, judge.

MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

It is ordered that J. B. Beattie, stenographer of the court, be appointed special examiner to take testimony in this cause in said parish of East Carroll; that complainant have forty days from the date hereof for her examination-in-chief, respondents thirty days next following for their examination-in-chief, and complainant have ten days thereafter for her examination in rebuttal.

A true copy.
Attest: [SEAL.] JULIUS ENNEMOSER, *D'y Clerk.*

806 I hereby certify the above to be a true and correct copy of the order in my possession.
Lake Providence, La., July 29th, 1882.
(Sig'd) J. B. BEATTIE,
Special Examiner.

Circuit Court of the United States for the Fifth Circuit and Western District of Louisiana, Holding Sessions in the City of Monroe.

MARY E. R. BOYD
vs.
W. G. WYLY *et al.* } No. 1.

Considering that the order of this hon. court of the 30th June, 1882, in regard to taking testimony in the foregoing and above-entitled cause, a certified copy of which is annexed hereto and made part hereof for reference, marked "A," does not authorize the special examiner, J. B. Beattie, to take testimony outside of or beyond the limits of the parish of East Carroll, in this State, respondent's counsel excepts and objects to the taking of any testimony under said order, without the territorial limits of said parish, upon the grounds

that the operation thereof and the authority of the special examiner thereunder is confined and limited to the said parish of East Carroll and cannot be extended beyond the express provisions;
807 that said examiner has no jurisdiction under said order beyond the limits of said parish, and the present proceedings before him in the parish of Orleans are *coram non judice.*

Therefore respondent's counsel excepts and objects to and protests against the taking of testimony in this case by said examiner under said order in the city of New Orleans or elsewhere beyond the limits of said parish of East Carroll, and he hereby notifies complainant's counsel that he will oppose the introduction of all such testimony on the trial of any and all issues in this cause.

Thus excepting, objecting, and protesting, respondent's counsel refuses to take part in or be present at the taking of any such testimony as aforesaid, and asks that this his objection and protest be filed.

(Sig'd) J. M. KENNEDY,
Solicitor and of Counsel for Respondents.

808 EXHIBIT "1." Referred to and made part of the foregoing testimony. Offered in evidence by complainant before special examiner August 4th. Filed May 12th, 1883.

UNITED STATES OF AMERICA.

CITY OF NEW ORLEANS, } ss:
Eastern District of Louisiana, }

Be it remembered that on this fourth day of August, in the year of our Lord one thousand eight hundred and eighty-two, before me, M. M. Cohen, a commissioner duly appointed on the 19th April, 1842, by the circuit court of the United States in and for the eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared Judge Henry L. Lazarus, a person of sound mind and lawful age, a witness for the complainant in civil suit now pending in the 5th circuit court of the United States in and for the western district of Louisiana, sitting at Monroe, wherein Mrs. Mary E. R. Boyd is complainant and W. G. Wyly *et al.* are defendants; and the said Henry L. Lazarus, being by me first carefully examined and cautioned and sworn to testify the whole truth and nothing but the truth, did depose and say:

809 Questions by Mr. MOTT:

Q. You reside in New Orleans?
A. Yes, sir.
Q. What is your profession, avocation, or business in life?
A. I am a lawyer by profession.
Q. And occupation?

A. At present I am one of the judges of the civil district court, parish of Orleans.

Q. Do you know the parties to this suit—Mrs. Mary E. R. Boyd, complainant, and Judge Wm. G. Wyly and Charles R. Egelly, defendants?

A. I only know Judge Wyly.

Q. Do you know where he resides?

A. I believe he resides in Lake Providence, in this State, or in the vicinity of Lake Providence.

Q. Were you of counsel or solicitor in the case of Wm. Gay against Oliver T. Morgan, executor of Oliver J. Morgan, No. 6612 of the docket of the United States circuit court, then called the circuit court of Louisiana, now the eastern district of Louisiana?

A. The firm of Kelly and Lazarus, of which I was a member, was associated with Mr. Aroni on behalf of the administrator of Gay in the case mentioned.

Q. Were breifs prepared for the use of the court by counsel for plaintiff in that case?

810 A. There were breifs prepared by Kelly and Lazarus and a breif prepared upon the evidence by Judge W. G. Wyly, the defendant in this case, who was associated with us in the case of Gay *vs.* Morgan in order to take the testimony in the country, with a view to a full presentation of the case to the court here in New Orleans.

Q. Did Judge Wyly take the testimony in the country?

A. It was taken under his directions—a large portion of it.

Q. Did he write and have prepared and printed a breif in that case?

A. There was one breif entirely written by Judge Wyly in that case, although the breif is signed by Kelly and Lazarus, Labatt, Aroni and Clinton, and W. G. Wyly; Judge Wyly's name appears third on that breif, Kelly and Lazarus second, Labatt, Aroni and Clinton first.

Q. That breif was entirely written and signed by Judge Wyly?

A. It was entirely written by him and signed by him with our approval; it is a breif containing some forty (40) odd pages.

Q. Was that breif a commentary upon the evidence in that case?

A. It was a review of the evidence in that case.

Q. If I produce the breif will you append your signature to it to verify it?

811 A. Yes, sir; other breifs upon questions of law in the case simply were prepared in the office of *of* Kelly and Lazarus.

Q. Do you recollect whether Judge Wyly referred to a man by the name of Micheal Gingery in his review of the testimony in that case?

A. Yes, sir; he made some elaborate comments upon his testimony.

(Signed) HENRY L. LAZARUS.

Taken, subscribed, and sworn August 4th, 1882, before me, at the place notified.

(Signed) M. M. COHEN, *U. S. C'r.*

And again, at the same time and place, personally appeared before me SAMUEL FREIDLANDER, a person of sound mind and lawful age, a witness for complainant in said case, who, being by me first carefully examined and cautioned and sworn to testify the whole truth and nothing but the truth, did depose and say:

Questions by Mr. MOTT:

Q. Where do you reside and what is your business?
A. I reside in New Orleans, and am a commission merchant.
Q. Were you ever commission merchant of Judge W. G. Wyly, of East Carroll parish, Louisiana; if so, during what year were you his commission merchant?
812 A. I have been his commission — since 1868, and even before that.
Q. Has he shipped you cotton made on the Raleigh plantation at that time?
A. Yes, sir.
Q. He has shipped you cotton made on the Raleigh plantation in East Carroll parish?
A. Yes, sir.
Q. Can you tell how many bales of cotton per year he shipped to you from the Raleigh plantation since 1868?
A. There is the statement made out by my book-keeper.
Q. That is the statement which you now produce?
A. Yes, sir.
Q. You are well acquainted with Judge Wyly, are you not?
A. Yes, sir.
Q. Did you know the plaintiff, Mrs. Mary E. R. Boyd?
A. No, sir.

Document marked Exhibit No. 2 offered in evidence and filed.
(Sign-d) SAMUEL FREIDLANDER.

Taken, subscribed, and sworn before me August 4th, 1882, at the place notified.
(Signed) M. M. COHEN, *U. S. Com'r.*

813 No. 2.

Statement of cotton shipped from Raleigh plantation to Sam'l Freidlander for sale for account of Mr. W. G. Wyly from the year 1868 to 1879, both inclusive:

1868, about	8	bales.
1869, "	111	"
1870, "	157	"
1871, "	228	"
1872, "	107	"
1873, "	280	"
1874, "	398	"
1875, "	443	"
1876, "	500	"

1877,	"	----------	358	"
1878,	"	----------	533	"
1879,	"	----------	15	"
			3,138	

E. & O. E.
New Orleans, August 3rd, 1882.

(Signed) SAMUEL FREIDLANDER,
Per JUSTUS VARIEN.

Ex-ibits. Samuel Freidlander.

814 And again, at the same time and place, personally appeared before me JULIUS ARONI, a person of sound mind and lawful age, a witness for complainant in said cause, who, being by me first carefully cautioned and sworn to testify the whole truth and nothing but the truth, did depose and say:

Q's by Mr. MOTT:

Q. Mr. Aroni, are you a member of the bar at New Orleans?
A. I am.
Q. Were you of counsel in the case of Wm. Gay against Oliver D. Morgan *et al.*, No. 6612 of the docket of the U. S. circuit court for Louisiana?
A. I was. In fact I was the counsel.
Q. What other counsel were associated with you in that case?
A. Originally the members of the firm who were associated with me in the practice of the law—Labatt and Clinton—neither of whom paid any attention to the case. I had charge of it, and after the dissolution of the firm of Labatt, Aroni and Clinton, which was some two (2) years prior to the trial of the case, the members of the firm, except myself, had nothing to do with the case. I associated Col. Kelly with me, and afterwards, for the purpose of obtaining testimony in the parish of Carroll, I associated with me Judge Wyly, as he resided in that parish.

815 Q. Was Col. Kelly a member of the firm of Kelly and Lazarus?

A. Yes, sir. I associated Col. Kelly with me before the firm of Kelly and Lazarus was formed. The Judge Wyly referred to is Wm. G. Wyly, a resident of East Carroll parish, Louisiana.
Q. Mr. Aroni, will you examine that brief filed in the case above referred to and state who wrote it (handing witness a brief)?
A. The brief handed to me is a review of the testimony obtained by Judge Wyly, and is confined simply to the facts of the case. This statements was prepared by Judge Wyly. Other briefs on questions of law in the case were also prepared. With those Judge Wyly had nothing to do. Judge Wyly stated these facts in court when the case was being argued before Judge Woods, as contained in said brief written by him.

(Signed) JULIUS ARONI.

Taken and subscribed and sworn August 4th, 1882, at the place notified, before me—

(Signed) M. M. COHEN, *U. S. C'r.*

And again, at the same time and place, personally appeared before me J. B. BEATTIE, a person of sound mind and lawful age, a witness for complainant in said case, who, being by me first carefully
816 examined and cautioned and sworn to testify the whole truth and nothing but the truth, did depose and say (he reducing his own testimony to writing in my presence):

J. B. BEATTIE sworn and examined on behalf of complainant.

By Mr. MOTT:

Q. Were you present in the office of Mess. Mott, Kelly and Saunders, att'ys-at-law, when the original notice of which the following is a copy was handed to Mr. J. M. Kennedy, attorney for def'ts in the case of Mrs. Mary E. R. Boyd *vs.* W. G. Wyly *et als.?*

United States Circuit Court, Western District of La.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

AUGUST 2ND, 1882.

You are hereby notified that on Friday, August 4th, 1882, at 10 a. m., the complainant in above-entitled case, the said Mrs. Boyd, will take the testimony, *de bene esse*, of Julius Aroni, Henry L. Lazarus, and Samuel Freidlander and E. D. Saunders before M. M. Cohen, United States commissioner, or before any other United States commissioner, in the office of Mott, Kelly and Saunders, No. 27 Carondelet street, New Orleans, Louisiana.

Very respectfully,

MOTT, KELLY & SAUNDERS,
Att'ys for Complainant.

817 A. Yes, sir.

Q. Did you see Mr. Saunders—Mr. E. D. Saunders—write said notice, and who was present in the office at the time?

A. I saw Mr. Saunders write the notice referred to; there was present in the office of Mess. Mott, Kelly and Saunders at the time said notice was written, besides myself, Mr. J. M. Kennedy, att'y for def'ts, Mess. Mott and Saunders, att'ys for complainant, and their office boy.

Q. Did you see Mr. Saunders, after reading the notice before referred to to Mr. J. M. Kennedy, hand the same to the said J. M. Kennedy, Esq., att'y for def'ts.

A. I heard Mr. Saunders read the notice referred to, after which he handed said notice to Mr. J. M. Kennedy, Esq., counsel for def'ts.

Q. Did not Mr. Kennedy, after the same was handed to him or before the same was handed to him, but after it was written, request Mr. Saunders to alter the day therein stated from Thursday, the 3rd of August, to Friday, August 4th, 1882?

A. Yes, sir.

Q. And was not the alteration made in the notice in accordance therewith?

A. Yes, sir; it was.

Q. Did not Mr. Kennedy give some reason for desiring the change, and was it not made to accom-odate him?

818 A. He did give as a reason that he wished to communicate with his client, Judge Wyly, by telegraph, and the change was made to accom-odate him.

Q. Did not Mr. Kennedy then leave the office of Mott, Kelly and Saunders and take with him the said notice referred to?

A. Yes, sir.

(Signed) J. B. BEATTIE.

Taken, sworn to, and subscribed before me this 4th day of August, 1882, at the place notified.

(Signed) M. M. COHEN, *U. S. Comm'r.*

United States Circuit Court, Western District of La.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

AUGUST 2ND, 1882.

To J. M. Kennedy, Esq., counsel for defendants in the above-entitled suit:

You are hereby notified that on Friday, August 4th, 1882, at 10 a. m., the complainant in above-entitled case, the said Mrs. Boyd, will take the testimony, *de bene esse*, of Julius Aroni, Henry L. Lazarus, and Samuel Freidlander and E. D. Saunders before M. M. Cohen, United States commissioner, or before any other United States commissioner, in the office of Mott, Kelly and Saunders, No. 27 Carondelet street, New Orleans, Louisiana.

Very respectfully,

(Signed) MOTT, KELLY AND SAUNDERS,
Att'ys for Complainant.

819 UNITED STATES OF AMERICA.

CITY OF NEW ORLEANS,
Fifth Circuit and Eastern District of Louisiana, } *ss:*

I, M. M. Cohen, a commissioner duly appointed on the 19th April, 1842, by the circuit court of the United States for the fifth circuit and eastern district of Louisiana under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States,"

passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witnesses live in New Orleans, State of Louisiana, more than one hundred miles from Monroe, State of Louisiana, the place of trial of the cause for and in which said deposition- *is* taken and is necessary.

I further certify that notification was made out and served on the defendant- or adverse parties, agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they may think fit, and that notification of the time and place of
820 taking the said depositions was made out and served on said defense or adverse party.

I further certify that on this fourth day of August, A. D. 1882, I was attended by the witnesses, who are of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses, except that J. B. Beattie reduced his testimony to writing in my presence, and after carefully reading the same to the witnesses has subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up, directing, and forwarding the same with my own hand to the court for which the same were taken.

I further certify that I am not of counsel or attorney to either of the parties in said deposition and caption named or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

[SEAL.] (Signed) M. M. COHEN,
U. S. Commissioner, Circuit and District Court United States for the Fifth Circuit and Eastern District of Louisiana.

Commissioner's fee, $20.00, paid by complainant.
(Signed) M. M. COHEN, *U. S. Comm'r.*

821 *Brief.*

Circuit Court of the United States for the District of Louisiana.

WILLIAM GAY
versus
OLIVER T. MORGAN, Executor, *et al.* } No. 6612.

Wm. Gay, of Louisville, Ky., an acknowledged creditor for $33,250 and interest, sues to set aside the sale of the succession property of Oliver J. Morgan, deceased, which was made on the 19th January, 1869, on the grounds of fraud and collusion and other causes set up in the bill, and to subject the property to the payment of his debt and to obtain the relief prayed for.

The material facts are: Oliver J. Morgan died in the parish of Carroll, where he resided and where all his property was in the year 1860, leaving a will in which he appointed his executor, Oliver T. Morgan (his nephew, and also the husband of his daughter, Julia

Morgan). This will was admitted to probate and the testamentary executor confirmed and qualified on the 15th October, 1860. An inventory was made about the same time, and the succession, consisting of movables and immovables, was appraised as follows:

822	15,711 acres of land, appraised at	$947,153 80
	Slaves, appraised at	196,961 00
	Movables, appraised at	38,200 00
	Total	$1,182,314 80

The heirs-at-law were his daughter, Mrs. Julia Morgan, wife of Oliver T. Morgan, and his great-grandson, the minor, Oliver Kellam, whose father was son of Ann Morgan, the daughter of Oliver J. Morgan.

In the will Oliver J. Morgan bequeathed to his daughter Julia three-fourths of his entire estate, the intention being to reduce the inheritance of the minor, Oliver Kellam, to one-fourth of his estate. There were also a few special legacies.

Prior to the death of Oliver J. Morgan, his wife, Mrs. Narcissa Morgan, died intestate, leaving as her estate her half interest in the community which had existed between her and her husband, Oliver J. Morgan.

In November, 1857, Oliver J. Morgan brought in the proper court in the parish of Carroll (then the 10th district court) suit, styled Oliver J. Morgan *vs.* Julia Morgan *et al.*, No. 2959, for the purpose of effecting a partition of the said community property, in which Mrs. Julia Morgan and the minor, Oliver Kellam, were interested, equally, being the sole heirs of Mrs. Narcissa Deeson, deceased, wife of Oliver J. Morgan. To this suit Mrs. Julia Morgan, authorized by her
823 husband, appeared and answered; also Malinda M. Kellam, the mother and natural tutrix of the minor, Oliver Kellam, appeared and answered. The court ordered the partition. The slaves were divided in kind, and the court ordered the land to be sold for cash, provided it brought the apprais-ment; otherwise the sale to be on one and two years credit. At the sale on 18th January, 1858, the property was adjudicated to Oliver J. Morgan for cash, he bidding the appraised value. One-half of the price of adjudication he retained, being half owner; of the other half the share coming to Mrs. Julia Morgan, to wit, $67,495.70, was (as stated in the sheriff's return) left in the hands of Oliver J. Morgan by request of Mrs. Julia Morgan, and the like amount, viz., $67,495.70, coming to the minor, Oliver Kellam, was also left in the hands of the adjudicatee, Oliver J. Morgan (as stated in the sheriff's return), to be paid to Mrs. Melinda M. Kellum, natural tutrix of said minor, Oliver Kellam, when demanded by her; all of which facts will fully appear by reference to a certified copy of the said partition suit and judgment, No. 2959, filed in this case.

In passing at this time we will merely remark there was no mortgage given by Oliver J. Morgan, nor did any legal or tacit mortgage attach to secure the price of adjudication, the partition sale being a cash sale.

824 The mortgage certificate filed in this case shows there was no mortgage recorded against Oliver J. Morgan to secure the price of adjudication, assuming that the same was not paid in the lifetime of Oliver J. Morgan; nor is there a vendor's privilege, because registry is necessary to establish and preserve the privilege of the vendor of immovable property in Louisiana. See revised code, article 3373 *et seq.*

Subsequent to the said partition sale John A. Buckner married Widow Malinda M. Kellam and became co-tutor of the said minor, Oliver Kellam.

During the war—probably 1863—this minor, Oliver Kellam, died, and his property passed to his mother, Mrs. Malinda M. Buckner, who also died a short time thereafter.

John A. Buckner, natural tutor of his daughter, Mellie, issue of his marriage with the said Malinda M. Kellam, now holds the rights and property *and property* formerly vested in said minor, Oliver Kellam.

Mrs. Julia Morgan died subsequent to the death of her father, Oliver J. Morgan. Her surviving heirs are Mrs. Matt. F. Johnson, wife of the present executor, and Mrs. George Johnson. Oliver T. Morgan, the husband of Mrs. Julia Morgan, died since this litigation has been pending.

825 The estate of Oliver J. Morgan consisted of five plantations, together with slaves and movables, viz., "Wilton," "Albion," "Melbourne," "Morganna," and "Westland" plantations, embracing 15,711 acres. This property came into possession of Oliver T. Morgan, executor, and has always been treated by him as his heir's—as the property of Oliver J. Morgan. It has yeilded a large revenue, for which the executor has given no account.

In 1860 John A. Buckner testifies that Wilton produced five hundred bales of cotton, Albion seven hundred bales, Morganna about six hundred bales, Melbourne produced seven hundred bales. He don't know what Westland produced, as Oliver T. Morgan planted on that place. He also said 450 lbs. was a commercial bale, and cotton was then worth from eight to nine cents per pound. See testimony of John A. Buckner, page 67 of the testimony taken by Special Commissioner S. D. Oliver.

Here, then, is 2,500 bales (exclusive of Westland), which, at eight cents per pound, amounts to ninety thousand dollars ($90,000)—the revenue of these plantations for the year 1860 which came into the hands of Oliver T. Morgan, executor, and which is not accounted for. It is proved these plantations made crops in 1861, 1862, and 1863. It — also shown that they were cultivated in 1864 and 1865, but whether the executor or the heirs collected the rents it is not shown.

826 In 1866 John A. Buckner rented Melbourne to H. B. Tibbetts at ten dollars per acre, and Matt. F. Johnson, whose wife is one of the heirs, also rented to the same party, for the same price, Wilton and Albion plantations. Buckner, in his testi-

mony, admits he received in cash from Tibbetts $3,000 on this contract for rent of Melbourne.

In 1867 Buckner cultivated Melbourne and Matt. F. Johnson planted on Wilton and Albion plantations in partnership with Sam'l L. Chambliss. In 1868 they leased or cultivated these same plantations.

The witnesses show that three plantations could readily have been rented at ten dollars per acre, and a large number of acres thereof was rented at about that price in 1866, 1867, and 1868. John A. Buckner testifies "that there has been no final division between the heirs; the heirs of Julia Morgan have held possession of the land they had before the war, and witness has held possession of the land he had before the war. Witness does not hold the property in common. There is only a temporary division. Witness has held possession of Melbourne ever since the war, and the heirs of Julia Morgan have held possession of Wilton and Albion—except the heirs have recognized Oliver T. Morgan as executor; but he did not require of them any account of the rents and revenues." See testimony of Buckner, page 73 of the testimony taken by Special Commissioner S. D. Oliver.

827 Henry Goodrich testifies that he was employed to manage Wilton and Albion in December, 1868, by Matt. F. Johnson, as agent for Oliver T. Morgan, executor, and he continued the management of those plantations for four years. This witness testifies that in 1869 Wilton and Albion produced eight hundred bales of cotton; in 1870 they yeilded seven hundred bales, and about the same number in 1871, and also in 1872, making 2,900 bales in four years, one-fourth of which was received for rent; and that the price of cotton for the four years mentioned averaged about sixty dollars per bale net. See testimony taken before Special Commissioner S. D. Oliver, page 119. It thus appears that Wilton and Albion produced a net revenue of $43,000 during the years 1869, 1870, 1871, and 1872; what Melbourne produced during those years is not shown.

C. M. Tilford, who succeeded Henry Goodrich as manager for the same parties and continued four years in charge of said plantations, testifies that "the annual rental of said plantations (including Melbourne) since the year 1873 has been about fifteen thousand dollars net down to the present time." See testimony taken before Special Commissioner S. D. Oliver, page 56.

It thus appears that the net rental of Wilton, Albion, and Melbourne plantations from the first of January, 1873, to the first
828 of January, 1878, at $15,000 per annum, amounted to $75,000.

It appears from a copy of the record in suit styled Oliver T. Morgan, executor of the estate of Oliver J. Morgan, *vs.* The United States, No. 3420 of the docket of the Court of Claims (filed in this case), that judgment was rendered for $21,870.68, and it appears from a certified copy of the United States Treasurer's check, dated September 10th, 1874 (filed in this cause), that Matt. F. Johnson, executor of Oliver J. Morgan, received said $21,870.08 for the proceeds of cotton captured by the United States forces during the war and taken from said plantation, for which sum said executor has also failed to account.

It appears from the inventory of October, 1860, that the executor received from this succession personal property, such as horses, carriages, mules, wagons, planting implements, household furniture, paintings, silver plate, etc., amounting to the aggregate value of $38,200, for which no account has been rendered.

We have shown that the executor has received and not accounted for—

1st. The proceeds of 2,500 bales of the crop of 1860, valued at	$90,000 00
2nd. He received from Court of Claims for proceeds of cotton	21,870 68
3rd. Buckner acknowledges receiving rents of H. B. Tibbetts in 1866	3,000 00
4th. The revenues yielded while Goodrich managed, as proved by him	43,500 00
829 5th. The net rental since 1st January, 1873, as testified to by Manager C. M. Tilford	75,000 00
Total	$232,870 68

Thus the total revenues proved to have been actually received by the executor and heirs of Oliver J. Morgan amounted to $232,870.68.

This does not include the revenues of Wilton, Albion, and Melbourne in 1866, 1867, and 1868 (except for the three thousand dollars received by Buckner from H. B. Tibbits in 1866), during which period the proof shows that said plantations were leased at ten dollars per acre per annum or cultivated by the heirs themselves; nor does this estimate of revenues embrace the rents of Melbourne in 1869, 1870, 1871, and 1872, as shown by the testimony of Goodrich. Besides the amount of revenues there is $38,200, the inventoried value of personal property received by the executor and not accounted for.

It is manifest that the executor and heirs of Oliver J. Morgan have used and appropriated revenues and personal property of said estate amounting in all to about $300,000, for which they have not accounted; nor have they paid the debts of the deceased. Now the question naturally arises, How have the executors and heirs of Oliver J. Morgan managed to keep all these revenues and personal property as well as the estate and elude and defeat the payment of complainant's claim of $33,250 and interest, which was acknowledged by the executor in 1866 and ranked by the judge as a valid claim against the estate?

830 The question is answered in the charges laid in the bill of complainant, viz: There was a fraudulent combination between Oliver T. Morgan, executor, who was the husband of Julia Morgan, and John A. Buckner and Ferdinand M. Goodrich, the attorneys of Oliver T. Morgan, executor, and Sparrow and Montgomery, the attorneys of John A. Buckner and also the attorneys of complainant; that these parties confederated to make, through the form of a succession sale, a simulated and fraudulent transfer of all the valuable property of the estate to themselves, ex-

cept the Westland tract of waste, overflowed, and abandoned lands, embracing 5,040 acres, for which a paper title was taken in the name of J. W. Montgomery, agent for creditors, but who had no authority to make said purchase, and the same has not been ratified and accepted by the creditors, and then they procure the discharge of the — without his accounting for the revenues and personal property.

The proof shows—

1st. That Sparrow and Montgomery, a law firm, were employed to represent complainant. The receipt of Sparrow for the claim, dated 16th of February, 1866, filed in evidence, shows the fact. See Exhibit B. On the 19th of April, 1866, Sparrow wrote to William Gay, viz: All your notes against the estate of Oliver J. Morgan, handed me in New Orleans, have been acknowledged by the executor and ordered to be paid by our district judge. Shall I re-
831 quire Henry Goodrich, a party to said instruments, to acknowledge them; "and, if so, and if he declines, what steps shall I take?" See Exhibit C, filed 10th of April, 1878. From Sparrow's letter to William Gay, dated August 22nd, 1866, we make the following extract, viz: "I want, if possible, either by leasing, selling, or cultivating, some of Judge Morgan's fine lands, to pay a dividend to the creditors next winter." See Exhibit D, filed April 10th, 1878.

2nd. The proof shows there was a motive for this fraudulent combination to despoil complainant and other creditors. Sparrow and Montgomery, although not the attorneys of record of the executor, set up a claim of ten thousand dollars for professional services against the estate, and assigned the same to F. M. Goodrich, who was the attorney of record, and with this claim, as stated in the pretended account filed, said Goodrich bought in the Morganna plantation at the pretended succession sale of January 19th, 1869.

Sparrow and Montgomery never appeared on record as the attorneys of said executor until after the pretended sale of January 19th, 1869, when they presented the account and asked for the discharge of the executor and the homologation of the pretended sales, including that of Morganna, for which their fee had been used in payment of the purchase price.

Of course, this was a strong pecuniary motive operating upon Sparrow and Montgomery. F. M. Goodrich was the adjudicatee
832 and took the paper title of Morganna plantation. But W. A. Johnson, who was afterwards the commercial partner of said F. M. Goodrich, has testified in this case in regard to this Morganna plantation, and he informs us (in his testimony taken before Special Commissioner Woolfley, and on file in this case) that subsequent to this pretended purchase of Morganna plantation from the executor of Oliver J. Morgan, J. W. Montgomery became indebted to said commercial firm of Goodrich and Johnson, and that he settled in part his large debt of some ten or twenty thousand — by turning over to said F. M. Goodrich his interest or his joint interest with Goodrich in said Morganna plantation, which already stood in Goodrich's name, and that subsequently said firm of Goodrich and John-

son transferred said Morganna plantation to one of their creditors in discharge of a debt due by them.

Here, then (if it be competent for complainant, a creditor alleging fraud, to show by parol evidence that Montgomery was one of the joint purchasers of Morganna plantation, and of this there can be no doubt), we have a clear case showing that there was a strong pecuniary motive operating upon the attorneys, Montgomery and Goodrich, to induce them to join hands to aid Oliver T. Morgan, executor, and John A. Buckner to despoil the creditors and absorb to themselves or families the aforesaid large revenues, per-
833 sonal property, and the valuable plantations of Wilton, Albion, and Melbourne, embracing 9,171 acres of probably the finest plantation lands in the State of Louisiana.

3rd. Of course Oliver T. Morgan, executor (who was the husband of Julia Morgan and deeply interested in behalf of the heirs of his deceased wife), felt a pecuniary interest for himself and said heirs, because they had used and enjoyed the large revenues of the estate for many years and still wished to have the best of the property secured to them by the interposition of John A. Buckner, as we charge; he doubtless wished to get rid of the creditors and employed the said attorneys to carry out the scheme of spoliation resorted to.

John A. Buckner doubtless felt a pecuniary interest and favored the plan to get for himself a part of these valuable lands, viz., Melbourne plantation, and be rid of creditors of the estate.

How did these confederates lay their plan or find a convenient method to get rid of the creditors and absorb the most valuable part of the estate? They put their heads together and concluded to divide among themselves the most valuable plantations and throw a crumb to Wm. Gay and the other creditors. They gave the attorneys Morganna plantation as their share of the spoils; they gave Wilton, Albion, and Melbourne to Oliver T. Morgan's family and to John A. Buckner, and they "abandoned" to Gay and the other creditors
834 (as the witness, J. M. Montgomery, calls it) the Westland tract of 5,040 acres of overflowed and wild lands, proved to be worth only the nominal price of $1.25 per acre.

The division being agreed on, the next thing was to put the legal title in these parties through the form merely of succession sales, then get the sales homologated and the executor discharged without rendering any account of the large amount of rents and revenues and personal property used and appropriated by the executor and the heirs. Knowing their weakness, they attempt to strengthen their untenable position by monitions, which, however, cannot save them. Most of the large creditors, being non-residents and represented by F. M. Goodrich and Sparrow and Montgomery, attorneys, would not be likely to file an opposition if the thing was hurried through.

Accordingly, active measures were taken, an order of sale was obtained on the joint petition of John A. Buckner and Oliver T. Morgan, executor, which was filed by their attorneys, Sparrow and Montgomery and F. M. Goodrich, on the 14th December, 1868.

On the 19th January, 1869, thirty-six days after the petition was

filed, the succession sales occurred. F. M. Goodrich became the adjudicatee of Morganna, 1,500 acres; John A. Buckner (for the heirs, as he testifies) became the adjudicatee of Wilton, Albion, and Melbourne, 9,171 acres, and J. W. Montgomery, agent for cred-
835 itors, as he pretended, became the adjudicatee of the Westland tract, 5,040 acres, wild and abandoned lands.

The price of adjudication of each of these pretended sales, as acknowledged in the deeds made out by the executor, was three dollars per acre, as if each tract possessed the same value, whilst the proof shows the value of the property (according to the testimony of Henry Goodrich, who was the manager of Wilton and Albion at one time) varied from $75.00 per acre to $1.25 per acre. That — was a vast difference in the value of the different plantations all the witnesses agree; for example, there was a residence on Wilton that cost $20,000, and the open lands of Wilton, Albion, and Melbourne were renting at $10.00 per acre, while the Westland tract of 5,040 acres was wild, overflowed lands, proved by all the witnesses to be worth only the nominal price of $1.25 per acre.

J. W. Montgomery testifies himself that these Westland lands were not worth over $1.25 per acre, and without authority he bought them in at $3 per acre for Wm. Gay and other creditors.

Henry Goodrich, the nephew of the late Oliver J. Morgan, has known the Wilton, Albion, and Melbourne lands or plantations since 1838. He lived on Wilton, and was the agent of Oliver J. Morgan from 1838 till 1843; has lived in the immediate neighborhood
836 ever since; was on the most intimate terms with Oliver J. Morgan, and a witness to his will. He testifies that Wilton, Albion, and Melbourne plantations were worth $75 per acre at the time of the sale.

This witness was employed as manager of Wilton & Albion plantations in December, 1868, by Matt. F. Johnson, agent for Oliver T. Morgan, executor, and continued to manage them for four years thereafter in behalf of the same party, notwithstanding the pretended adjudication and sale to John A. Buckner on the 19th January, 1869. This witness says Buckner never asserted title or claimed the ownership of Wilton and Albion plantations, although residing on Melbourne, an adjoining place; that no change of possession resulted from the adjudication to Buckner.

This witness, a relative and trusted friend of the Morgan family, was bound to say, when pressed on the examination, that these plantations were worth $75 per acre, basing his judgment upon his thorough knowledge of them and from the large revenues they yielded annually.

C. M. Tilford, who succeeded Henry Goodrich as manager of these plantations in behalf of the same party and managed them for four years, swears that the net rental of Wilton, Albion, and Melbourne was $15,000 annually.

N. D. Ingraham, who was for many years the overseer of Oliver J. Morgan on Wilton plantation and was one of the appraisers
837 at the taking of the inventory in 1860, swears the value of these lands since the war is $35 per acre. He is cor-oborated

by S. T. Le May, who also was a manager for the Morgan estate before the war.

C. A. Hedrick, the assessor of taxes in 1866 and in 1867, deputy tax collector in 1868 and 1869, and who resides on a contiguous plantation, swears these lands are worth $50 per acre. He is corroborated by the witnesses, J. S. Milliken, C. M. Tilford, Thomas B. Rhodes, E. M. Devine, and other witnesses, and these witnesses say Westland lands were not worth more than one dollar $\frac{25}{100}$ per acre, being wild and overflowed lands, located eight miles back from the river.

Here we desire to call the attention of the court to an abstract from the assessment roll of 1868, certified to by the auditor of this State and filed in evidence, showing that Wilton plantation was assessed in 1868 at the aggregate value of fifty thousand dollars and Albion at forty-six thousand dollars, and Melbourne (assessed in the name of the Kellam estate) at forty thousand dollars.

John A. Buckner himself gave the following answer to this question propounded by his own, J. W. Montgomery, viz: "What would you have taken for the whole property if it had belonged to you, in cash? Witness states there were 6,000 acres of the 9,000
838 acres which he purchased in in the woods, and he would have been willing to have taken twenty dollars per acre for the cleared land and about one dollar per acre for the woodland." See page 110 of the testimony taken before special commissioner.

Here, then, Buckner admits that the three thousand acres of cleared lands adjudicated to him (in pursuance of this fraudulent combination or collusion with the executor) at three dollars per acre were actually worth twenty dollars per acre—in other words, that he acquired these lands far below their value as estimated by himself.

After reading the testimony of the witnesses, Henry Goodrich, Thomas B. Rhodes, C. M. Tilford, J. W. Ervine, N. D. Ingraham, S. T. Lemay, C. A. Hedrick, Jas. A. Milliken, E. M. Devine, and considering the abstract from the assessment roll of 1868, and also the admissions of Buckner himself, we think the court cannot fail to come to the conclusion that the price of $3 per acre for Wilton, Albion, and Melbourne plantations, adjudicated to John A. Buckner on 19th January, 1869, was wholly inadequate to sustain a fair sale of probably the most valuable plantation lands in Louisiana, and that it occurred from the combination of Oliver T. Morgan, executor, John A. Buckner, F. M. Goodrich, and Sparrow and Montgomery to despoil the creditors and to divide out among themselves.
839 How is it possible for lands renting at ten dollars per acre and yielding a net rental of $15,000 annually to be sold at the trifling price of three dollars per acre by this executor to John A. Buckner in behalf of the heirs (including the family of the executor) and the court escape the conviction that it resulted from a fraudulent combination by the parties and attorneys who got up the sale, and that a great moral wrong has been committed upon the creditors of the estate?

Why did these parties join hands to procure the sale and to obtain

the discharge of the delinquent executor, Oliver T. Morgan, without requiring him to file a tableau of debts and to account for the personal and large revenues of the estate, and why was not a meeting of the creditors called, if this wealthy succession had suddenly become insolvent?

These questions have not been answered by the defendants, although most of them have given evidence, and they all have had a fair opportunity to explain the matter.

The truth is the revenues of the succession received by Oliver T. Morgan and his heirs were more than sufficient to pay the creditors of the deceased, but as the family of the executor and the family of Buckner had for eight years enjoyed the large revenues of
840 this wealthy estate, in December, 1868, it doubtless occurred to them that with the aid of skillful attorneys the heirs of Oliver J. Morgan might not only be relieved from giving up these revenues, but might acquire a title to Wilton, Albion, and Melbourne plantations, 9,171 acres, and continue in the enjoyment of the $15,000 net rental accruing from said plantations annually.

To accomplish this they could well afford to give Morganna plantation as a fee to the attorneys employed to obtain so satisfactory a a result.

In order to show that there was a fraudulent combination to secure the title to Wilton, Albion, and Melbourne plantations to the family of the executor (or rather the family of his deceased wife, Julia Morgan) and to John A. Buckner, and to show beyond doubt that the mere form of a succession sale was resorted to by Oliver T. Morgan, executor, and John A. Buckner and their attorneys to obtain these valuable plantations, we specially call the attention of the court to the testimony of John A. Buckner, taken by Special Commissioner S. D. Oliver and on file in this case.

On pages 72 and 73 of that testimony John A. Buckner testifies as follows:

"Witness says his understanding was at the time of the sale, in January, 1869, when he bought the property for the heirs,
841 that *that* they were to receive their proportion of the land purchased in witness' name; he was to retain his proportion. They (meaning the heirs of Julia Morgan) were to take three-fourths of the land and witness one-fourth, and this understanding was had as to the exact amount in the division after the sale. There was no conversation or agreement with the heirs or any other parties as to how the division should be made. Witness says he don't know of any cash having been paid at the sale in January, 1869. He paid none. Witness — the adjudicatee of some 9,000 acres; don't remember who cried off the property. * * * Witness says he does not think any person bid against him at the sale; does not remember that there was any competition in bidding at the sale of any of the property."

And, on page 73, this witness, John A. Buckner, testifies "that there has been no final division between the heirs. The heirs of Julia Morgan have held possession of the land they had before the war, and witness has held possession of the land he had before the

war. Witness does not hold the property in common. There is only a temporary divison. Witness has held possession of Melbourne ever since the war, and the heirs have held possession of Wilton and Albion, except that the heirs recognized Oliver T. Morgan executor, but he did not require of the many account of the rents and revenues." (See testimony of Buckner before Special Commissioner S. D. Oliver, page 73.)

842 From the statement of the principal defendant, John A. Buckner himself, it is manifest this sale of the 19th of January, 1869, was a mere paper transfer. He knows of no cash having been paid. "He paid none." It produced no change of possession. The heirs of Julia Morgan still continued to hold Wilton and Albion, and Melbourne plantation continued in the possession of this witness, Buckner; that the property is not held in common, and there is now "only a temporary division." The court will bear in mind the writ of sale required the executor to sell for cash; the advertisement stated the terms to be for cash on the spot; and the deed of the executor declares that the adjudicatees complied with their bids and paid in cash the amount of their bids; all of which is untrue, for Buckner says "he knows of no cash having been paid at the sale—he paid none."

If the adjudication of Wilton, Albion, and Melbourne, 9,171 acres, to John A. Buckner was a *bona fide* and honest transaction, why was not Wilton and Albion (three-fourths of the thing adjudicated) delivered to Buckner?

H. Goodrich, T. B. Rhodes, and John A. Buckner himself all say in their testimony that there was no delivery; that no change of possession resulted from the adjudication. On page 106 of Buckner's testimony he not only declares that he never got possession, but he testifies "that he has never sought to get possession of

843 Wilton and Albion plantations."

He testifies "that the plantations referred to were in the corporeal possession of Oliver J. Morgan up to the time of his death, and they were inventoried as part of the succession of Oliver J. Morgan, deceased, and witness has always considered said plantations as part of the estate of Oliver J. Morgan."

On page 107 this witness (John A. Buckner) says: "He has never acquiesced or consented that said property should be treated as the property of the heirs of Julia Morgan," under the pretended conveyance in the lifetime of Oliver J. Morgan.

To the next question (on page 108) "witness answers that he bought in at the sale, under his mortgage, the three plantations, Wilton, Albion, and Melbourne, and that on account of the will of Judge Oliver J. Morgan he retained the Melbourne plantation which he occupied before the war, and left the other heirs in possession of Wilton and Albion plantations, which they occupied and claimed before the war."

John A. Buckner further testifies that he never recognized or ratified the conveyance or donation *inter vivos* to Julia Morgan by Oliver J. Morgan before his death, "and that all his actions in the matter have been based on the will of Oliver J. Morgan."

As to this mortgage claim referred to by Buckner, under which he says he bought in these three plantations of Wilton, Albion,
844 and Melbourne, and let the heirs of Julia Morgan keep Wilton and Melbourne out of his respect for the will of Oliver J. Morgan, we will remark that this witness has fallen into a grave error. As a matter of fact, in January, 1869, there was no mortgage bearing on the property in favor of John A. Buckner, or the minor, Oliver Kellam, to whose rights and property as tutor — had succeeded.

The mortgage certificate from the recorder of the parish of East Carroll, formerly the parish of Carroll, shows that the estate of Oliver J. Morgan was only encumbered with one mortgage, and that was a conventional mortgage recorded in Mortgage Book "F," folios 150 and 151, in favor of Francis Haney, and it affected only two sections of land, viz., sections 20 and 29, township 20, range 12 east, containing 1,280 acres, and the recorder in his mortgage certificate says: "I do further certify that there is not and has not been recorded in this office any other mortgage, legal, conventional, or judicial, against the said Oliver J. Morgan or his succession." This mortgage certificate was dated on the 30th of April, 1878, and is filed in this case. We assert, without the fear of contradiction, that this mortgage claim set up by Buckner and so often referred to in the deposition of his counsel, J. W. Montgomery, as well as in the answers filed by the defendants to this bill, is all a myth.
845 There never was a mortgage of the kind affecting the property of Oliver J. Morgan. A certified copy of the partition suit in the proceeding styled Oliver J. Morgan *vs.* Julia Morgan *et al.*, No. 2959 of the district court of the parish of Carroll, we have filed in evidence. It shows that the community property acquired by Oliver J. Morgan during the life of his wife, Mrs. Narcissa Deeson, was divided in said partition proceedings; that Mrs. Julia Morgan and the minor, Oliver Kellam, were equally interested as heirs-at-law of the said wife of Oliver J. Morgan; that the slaves were divided in kind; that Wilton, Albion, and other lands belonging to the said community were sold by order of the court to effect the partition, at which the said lands were all adjudicated to Oliver J. Morgan at their appraised value, the terms being cash. Of the price of adjudication $67,495.70 was due to Mrs. Julia Morgan, and by her directions (as the sheriff states in his return) this sum was left in the hands of her father, Oliver J. Morgan; a like sum of $67,495.70 was also due to the minor, Oliver Kellam, and the sheriff's return states that he left this sum in the hands of the adjudicatee, Oliver J. Morgan, to be paid to Mrs. Malinda M. Kellam, natural tutrix, when demanded by her. For all we know it may have been collected long ago.
846 Now, whether the minor's share of the proceeds of this cash sale were ever received or not by his natural tutrix, Mrs. Malinda M. Kellam, who afterwards married John A. Buckner, is a matter of no importance, so far as this litigation is concerned. One thing is certain, the circumstance that this sum was not drawn out by the natural tutrix did not create a mortgage against Oliver J.

Morgan. He was merely a depository of the funds left by the sheriff, viz., $67,495.70, to be paid when demanded by Mrs. Malinda M. Kellam, natural tutrix. This was on the day of the sale, viz., 18th January, 1858. As Oliver J. Morgan was not the tutor of the minor, Oliver Kellam, there was no legal mortgage. The partition sale being a cash sale, there was, of course, no conventional mortgage to secure the share of the price of adjudication due to the heirs of Mrs. Narcissa Deeson, wife of Oliver J. Morgan.

There was no vendor's privilege, because there was no — of a credit sale, and by the law of Louisiana to create and preserve the privilege of the vendor of land there must be registry of the deed in the mortgage book of the parish where the land is situated.

It is therefore manifest that John A. Buckner and his attorneys, Sparrow & Montgomery, who have said so much in their testimony and in their answers to complainant's bill in regard to this mort-
847 gage claim of John A. Buckner, tutor (resulting from the sale of the community property in the partition suit styled Oliver J. Morgan *vs.* Julia Morgan *et al.*, No. 2959), have made a grave error on a question of fact; and upon this they seem to base the whole defense in this case.

The main defence set up in the answer of John A. Buckner is that he, as tutor of his daughter, had a vendor's privilege on the lands of the estate of Oliver J. Morgan for about $100,000, including interest, arising from the adjudication to said Oliver J. Morgan of his wife's interest in the community property at her death; and in support of this he refers to the mortuary proceedings of the succession of Oliver J. Morgan and to suit No. 2959, filed in the district court of the parish of Carroll on December 2, 1857, *by* Oliver J. Morgan *vs.* Julia Morgan *et al.*; also that three-fourths of the Morgan lands belonged to Mrs. Julia Morgan under the deed of sale and donation from Oliver J. Morgan, recorded in the parish of Carroll on 15th of March, 1858, in Notarial Book "J," folios 210 to 213, and that the said privilege and mortgage claim of John R. Buckner was sufficient to absorb the estate; consequently the creditors were not injured by the adjudication to him on the 19th of January, 1869.

The mortuary papers of the succession of Oliver J. Morgan and the partition No. 2959, styled Oliver J. Morgan *vs.* Julia Morgan *et al*, will be searched in vain to find evidence in support of
848 this pretended claim set up by *set up by* John A. Buckner. They show nothing of the kind. Oliver J. Morgan gave no such mortgage upon his lands, nor was there a vendor's privilege recorded to secure the $67,495.70, the share of the minor, Oliver Kellam, in the price of adjudication to Oliver J. Morgan at the partition sale of the 18th of January, 1858.

The court will bear in mind that as no tableau or statement of debts had been filed by the executor there was no legal evidence that there were any debts, and especially the pretended mortgage claim set up by John A. Buckner, tutor; there was no legal evidence to authorize the court to order the sale.

The order of sale was a consent decree, the result of an improper combination, as we charge; and a legal fraud was practiced on the

court and on the creditors when Buckner and the executor joined in the petition, one alleging the claim and the other acknowledging it, and both praying for the sale of succession property to pay it when there was no such mortgage claim.

As to the defence suggested in the answer of John A. Buckner that three-fourths of these lands belonged to the succession of Julia Morgan, we will remark it is no defence for Buckner to make, who admits he paid no cash and obtained these three plantations
849 from the executor of Oliver J. Morgan. Wilton, Albion, and Melbourne plantations were inventoried and possessed by the succession of Oliver J. Morgan. The executor of this succession had no authority to surrender these lands or any part *of* thereof to the succession of Julia Morgan. She survived her father, and yet she made no objection to these lands being placed by her husband, Oliver T. Morgan, executor, on the inventory of the succession of Oliver J. Morgan.

These lands were never inventoried as part of the succession of Julia Morgan, notwithstanding the pretended deed of donation and sale was recorded long before the death of Oliver J. Morgan.

Wm. Gay, an acknowledged creditor of the succession of Oliver J. Morgan for $33,250 and interest, cannot be defeated in this pursuit to set aside these fraudulent and simulated sales and to subject the property to the payment of his claim by this defense, coming from Buckner, that three-fourths of said lands belong to the succession of Julia Morgan.

John A. Buckner swears that he paid no cash at this cash sale; he is not a creditor of the succession of Julia Morgan, and therefore has no interest to set up claims in behalf of that succession against the succession of Oliver J. Morgan, from whom he received the corporeal possession.

And here we again call the attention of the court to the testimony of John A. Buckner, who swears: "The plantations referred to
850 (meaning Wilton, Albion, and Melbourne) were in the corporeal possession of Oliver J. Morgan up to the time of his death, and they were inventoried as part of the succession of Oliver J. Morgan, deceased, and witness has always considered said plantations as a part of the estate of Oliver J. Morgan."

* * * * * * *

"Witness says he has never acquiesced or consented that the property should be treated as the property of the heirs of Julia Morgan.

"Witness says he bought in at the sale, under his mortgage, the three plantations, Wilton, Albion, and Melbourne, and that on account of the will of Judge Oliver J. Morgan he retained the Melbourne plantation, which he occupied before the war, and left the other heirs in possession of Wilton and Albion plantations, which they occupied before the war." Witness further stated he never recognized or ratified the title of Julia Morgan acquired from Oliver J. Morgan in his lifetime, "and that all his actions in the matter have been based on the will of Oliver J. Morgan." See testimony of John A. Buckner, taken before S. D. Oliver, special commissioner, pages 106, 107, and 108.

The pretended sale of three-fourths of these plantations inventoried as the property of Oliver J. Morgan under and by order of the court in the succession of Julia Morgan was a mere farce, gotten up
851 by Oliver T. Morgan, who was executor of his wife's (Julia Morgan's) estate, as well as executor of estate of Oliver J. Morgan, in order to confuse matters and cover up the fraud and simulation attending the sale of these plantations.

How could the executor of the estate of Oliver J. Morgan assume the contradictory and inconsistent positions involved in the sale of the same property at the same time by two different successions? His duty as a faithful administrator was to sell the property in the interest of the succession of Oliver J. Morgan and apply the proceeds honestly to the payment of creditors of that estate.

The executor could not be faithful to his trust and the attorneys employed by him could not be true to their client, the succession of Oliver J. Morgan, after they had obtained an order of sale and advertised the property in the interest of said estate, to turn around and provoke a sale at the same time in the interest of the succession of Julia Morgan.

Neither the executor nor John A. Buckner nor the attorneys, who, as we charge, are all parties to this fraudulent transaction, ought to be heard to plead their own immorality as a ground of defense; they ought not to be heard to say these fraudulent and simulated sales should stand and they be benefitted, because the suc-
852 cession of Julia Morgan owned three-fourths of these plantations, and as such they were sold by the order of court in the interest of Julia Morgan's succession on their own application, and then again turn around and in this pretended final account credit the estate of Oliver J. Morgan with the proceeds. Rather let fraudulent and simulated sales be set aside and the property be restored with rents and revenues to the estate, and then, if the succession of Julia Morgan has any title, let the question of the title of these plantations be determined by the court in a suit contradictorily with proper parties.

Neither of these defendants have any interest in that controversy. Buckner paid no cash at the adjudication, and testifies he never recognized or ratified the pretended title of Julia Morgan to three-fourths of these plantations. As before remarked, we say these sales by the succession of Julia Morgan were a mere farce—

1st. Because Julia Morgan's estate never held possession nor made an inventory of these plantations.

2nd. There was no tableau or statement of debts, no legal evidence that there were any debts, and therefore no cause for the sale. There was only six days' advertisement.

3rd. No price was paid to the succession of Julia Morgan or by any of these adjudications, and no account was rendered to
853 that succession. The whole thing was a mere simulation.

Beyond all that, if the matter were now open for discussion, we can show that the pretended deed and donation from Oliver J. Morgan to his daughter, Julia Morgan, recorded 15th March, 1858,

is wholly without effect as a muniment of title and utterly void, because—

1st. As a giving in payment it is void, because by our code this contract (unlike a sale in this respect) must necessarily be attended with delivery, and no property was delivered in discharge of this claim of $67,495.70, owing by Oliver J. Morgan to Julia Morgan.

2nd. It is void as a sale for want of a price. Mrs. Julia Morgan paid no cash and promised to pay no sum whatever for the property, although there was a valuation mentioned.

3rd. As a donation it was not attended with delivery, but by express agreement the property was retained during the life of the donor. In effect, this donation is in the nature of a will or testamentary disposition of property in view of death. At any rate, a party cannot donate to his heirs his property to take effect after his death and thereby defeat his creditors; otherwise as soon as a man acquired property he could pass a formal act of donation to his heirs to take effect after his death, thereby put it beyond the reach
854 of his creditors. To sanction such a doctrine would be to encourage dishonesty by the court.

But let us assume that John A. Buckner, tutor, held a mortgage claim resulting from the partition sale of the community property of the wife of Oliver J. Morgan to Oliver J. Morgan on 18th January, 1858, for $67,495.70; still the adjudication of Wilton, Albion, and Melbourne to John A. Buckner at $3 per acre on 19th January, 1869, cannot stand or be upheld as a valid sale, because the writ of sale and advertisement was for cash on the spot, and Buckner swears "he knows of no cash having been paid at the sale of 19th January, 1869; he paid none."

Here the ingenuity of the counsel, J. W. Montgomery (also one of the defendants), came in and suggested that Buckner's bid was on the strength of his preferred mortgage, and, by previous agreement with Oliver T. Morgan, Buckner's bid was to be considered as cash, and Buckner's mortgage was to be considered as credited to the amount of his—, viz., $27,513, being $3 per acre on 9,171 acres; but here grave difficulties arose to make this happy suggestion appear reasonable and consistent; and besides, Buckner's conscience would not let him give such testimony, although pressed and urged to do so on cross-examination by his own attorney, J. W. Montgomery.

855 In support of this assertion we will copy two questions and answers propounded to John A. Buckner by J. W. Montgomery, attorney on cross-examination, viz:

"Was or not your bid on the property which you bought at the sale of the 19th January, 1869, received as a cash bid by the executor and a credit allowed to you on your claim for the amount of said bid?" Witness answers "that he was not on speaking terms with the executor and left the business with his attorneys."

Cross-question. "As you did not pay the cash, how was your bid settled; if by you, how; or if by your attorneys, how did they report to you?" Witness answers that "the whole settlement was made by my attorneys." (See testimony of John A. Buckner, page 100.) He

had previously stated that Sparrow & Montgomery were his attorneys.

To show beyond doubt that the pretended mortgage claim of Buckner was not extinguished to the amount of his bid, viz., $27,513, by any receipt or acquittance therefor by the attorneys of John A. Buckner (for he swears the whole settlement was left to his attorneys), J. W. Montgomery himself was examined as a witness, and we copy from his testimony (taken before S. D. Oliver, special commissioner,
page 224) the following remarks on this point, viz.: "Wit-
856 ness answers he did not have in his hands for collection or under his control the said mortgage claim (of Buckner) at the time of adjudication, for Buckner was present and had entire and exclusive control of the same. Witness never did have control of it further than to act under the instructions of Buckner and get out the necessary process, and witness did not, by any receipt, acknowledgement of payment, or by word or act, do anything at the time of adjudication or subsequently to extinguish the said mortgage claim to the extent aforesaid; he says that he filed the account in court, where that same is set down as having been paid by Buckner; there was no written vouchers passed between him and the executor, that witness knows of."

Here, then, by the testimony of John A. Buckner and J. W. Montgomery themselves, it appears that there is no foundation whatever for the ingenious theory (to get over the trouble that no price was paid) that the bid of John A. Buckner, viz., $27,513 was, by agreement with the executor, taken as cash, and his mortgage claim was extinguished to the amount of said bid, assuming that Buckner had a mortgage claim, and assuming that the executor had the right to alter the terms of sale which had been fixed by the court for cash,
both of which propositions, however, we deny.
857 The court will bear in mind that J. W. Montgomery made out the final account for the executor, Oliver J. Morgan, after these fraudulent and simulated sales, and this was the only service the mortuary papers show that Sparrow and Montgomery did for said succession, and in which account they set themselves down as preferred creditors for professional services for $10,000, and with this F. M. Goodrich as transferee pretends to buy in and settle for the Morganna plantation.

The court will also bear in mind in this account made out by Sparrow & Montgomery there is the following entry as a debit against the estate made by the executor, viz:

"1869, January 23. To this amount paid John A. Buckner, tutor, to his minor child, Mellie Buckner, on account of acknowledged and preferred claim descending to her from Mrs. Narcissa Deeson, wife of Oliver J. Morgan, $27,513."

And on the credit side of said executor's account is the following entry, viz:

"By this amount realized by the sale at public auction of 9,171 acres of land to John A. Buckner, as per return on writ of sale, $27,513."

The testimony of John A. Buckner and J. W. Montgomery them-

selves show that the above entries in the account of Oliver
858 T. Morgan, executor, are in fact untrue, for Buckner swears "he knows of no cash having been paid at the sale of 19th January, 1869; he paid none." He also swears he made no agreement with the executor that his bid should be received as cash and a credit allowed therefor on his pretended mortgage claim; "that the whole settlement was made by my attorney," meaning J. W. Montgomery; but Montgomery was called as a witness, and under oath he admitted the truth, viz: "Witness did not by any receipt, acknowledgement of payment, or by word or act do anything at the time of adjudication or subsequently to extinguish the said mortgage claim to the extent aforesaid; he says that he filed the account in court (meaning the executor's account) where this sum (meaning $27,513) is set down as having been paid by Buckner; there was no written vouchers passed between him (meaning Buckner) and the executor, that witness knows of."

Here, then, we have undoubted evidence showing simulation and fraud, showing that three of the finest plantations in Louisiana—Wilton, Albion, and Melbourne—embracing in the aggregate 9,171 acres, and yielding an annual net revenue of $15,000, were adjudicated by the executor on 19th January, 1869, to John A. Buckner
859 at the trifling price of $3 per acre, not one dollar of which was paid, either in cash or by allowing a credit on the mortgage claim of John A. Buckner, tutor, assuming he had such a mortgage claim and assuming that the executor had the authority to alter the terms of sale, ordered by the judge to be for cash; besides this evidence shows the recitals in the deeds signed by the executors (that each of the adjudicatees paid in cash the amount of his bid), and also the recitals in the final account of the executors, prepared by J. W. Montgomery, attorney, are untrue as a matter of fact. An executor who knowingly makes untrue recitals of payments in his account commits a grave fraud on the court and the creditors, and subjects *and subjects* all his official acts to the gravest suspicions.

And here we repeat our remark that the happy suggestion of Buckner's attorney (that by agreement with executor Buckner's bid was to be received as cash and a credit allowed for the amount thereof on his pretended mortgage claim) would be attended with grave difficulty in order to appear reasonable and consistent. Assume this theory to be true and that the price of adjudication of the 9171 acres to Buckner was paid by the extinguishment of his supposed mortgage claim to the amount of $27,513, then why was not Wilton and Albion delivered to Buckner? Why did he not give
860 the executor, as a voucher, a receipt acknowledging payment of $27,513 on said pretended mortgage claim? And why did he set up his answer that three-fourths of these lands belonged to the estate of Julia Morgan? If the recital in the executor's account be true, that the sale was an honest transaction and that Buckner's mortgage claim was extinguished to the extent of $27,513, being the amount of the price of Wilton, Albion, and Melbourne plantations, why did not Buckner demand the possession of the said plantations? Why does Buckner swear he bought in his name the three planta-

tions for the benefit of the heirs, and let Wilton and Albion remain in possession of the heirs of Julia Morgan out of respect for the will of Oliver J. Morgan? How can either John A. Buckner, J. W. Montgomery, or the executor stand up in court and say that three-fourths of these lands belonged to and were sold in the succession of Julia Morgan after they have gone into court and made the solemn recitals in the said account rendered in the succession of Oliver J. Morgan?

Will the executor or the attorney who drafted that account, wherein the whole property is declared to have been sold and the whole price pretended to be accounted for, be heard to say that they there wrote and acted falsely; that they deceived the court and the creditors, and now, when detected and overwhelmed in the
861 fraud and simulation, will they be heard to set up the defense that three-fourths of the property belonged to Julia Morgan's estate, and therefore they should not give up the spoils; that they should not return to the estate these valuable plantations, together with the large revenues they have yielded?

In regard to the reality of the sale of the Westland tract only a quotation from the evidence of one witness is necessary to show that it was a mere simulation, gotten up for appearances and to cover up the spoilation of the estate in the other fraudulent and simulated adjudications.

We call the attention of the court to the following questions and answers of J. W. Montgomery:

Question by counsel for complainant:

"You have said that the Westland lands, 5,040 acres, were adjudicated to you for creditors named in the final account of Oliver T. Morgan, executor, for $15,120; that no cash was paid, but that the capital or claims of the respective creditors were reduced by said bid and adjudicated to the amount of said bid, and to that extent extinguished. Now please state whether or not, on your own responsibility and without instruction from said creditors, you, as a matter of fact, assumed to invest their capital or claims to the aggregate amount of $15,120 in said lands, and whether or not,
862 by your receipt as attorney or otherwise, or by any act of yours, the capital or claims of the creditors aforesaid have been extinguished to the amount aforesaid."

Witness answers that he did not assume to invest the capital or claims of the creditors referred to in the purchase of the 5,040 acres of land referred to; that he has given no receipt acknowledging the extinguishment in part of any of these claims of the creditors referred to, and he does not consider that his act and bid at the adjudication and previously, as well as subsequently, can be considered to have reduced, extinguished, destroyed, or in any manner have impaired the rights and claims of the creditors mentioned beyond any acceptance or ratification they might afterwards make.

Witness' name was used as the purchaser in the character of a mere depository of title at the request of Oliver T. Morgan, executor, and F. M. Goodrich. It was well known that none of the par-

ties to the sale, meaning Oliver T. Morgan, F. M. Goodrich, and witness, had authority to use the names of the creditors in the purchase of the property for them or in their name, but as Buckner had been coerced into allowing something to be saved for the creditors it was suggested that for convenience sake the name of some one should be used in the adjudication, and witness' name
863 was thus selected to hold title for the benefit of all the creditors who might avail themselves of the benefit secured in their favor, or rather by the bid. See testimony of J. W. Montgomery, taken before S. D. Oliver, special commissioner, pages 188 and 189.

This witness further states that he has no knowledge that any of the creditors ever accepted this adjudication of Westland lands.

It is manifest there was no sale of the Westland tract, because there was no "*aggregatio mentium;*" there was no purchaser (for Montgomery had no authority to bid, as he admits), and there was no price paid and no delivery.

Of course, no argument is necessary to show that this adjudication of the Westland lands was an absolute nullity for want of the necessary elements of a sale, and that the said lands still belong to the estate.

In regard to the — Morganna plantation to F. M. Goodrich at $3 per acre, it is stated in the account filed by the executor that he paid for it by the extinguishment (to the amount of his bid) of the preferred claim of Sparrow & Montgomery for professional services for $10.00, which said claim had been assigned to said F. M. Goodrich.

Upon its face this transaction was a manifest fraud and simulation.

864 The court ordered a cash sale, and the executor had no authority to alter the terms of sale for the individual benefit of his legal adviser, F. M. Goodrich, and convey the property to him without receiving payment in cash for his bid.

Where is the foundation of this large fee of $10,000 set up by Sparrow & Montgomery and with which Goodrich, as assignee, pretended to purchase the Morganna plantation?

The mortuary papers show that up to th*at* time of the sale all the professional services for the estate of Oliver J. Morgan had been done by F. M. Goodrich, and they consisted only in opening the succession, probating the will, and joining in the application for the sale petitioned for by Sparrow & Montgomery, as attorneys for John A. Buckner. No account had been filed and no tableau or statements of debts had been presented to the court by the executor.

The only service, so far as the record shows, that Sparrow & Montgomery ever rendered for the executor was after the sale, when they sought to have the court confirm these fraudulent adjudications of the 19th January, 1869, and to discharge the executor without requiring him to account for the personal property and large revenues yielded by these plantations while under his administration.

865 This service was injurious to the estate and the creditors instead of beneficial, and it constituted no valid claim against the estate. The truth is, this claim had no foundation whatever,

and was used to conceal the real fact, disclosed by the testimony, to wit, that Morganna was acquired and held jointly by J. W. Montgomery and F. M. Goodrich, notwithstanding Goodrich appeared as the adjudicatee. It was doubtlessly given by the heirs as a reward for the service- of these attorneys in their scheme to despoil the estate and the creditors.

Here we call the attention of the court to other important facts connected with these fraudulent adjudications of the 19th January, 1869. The sales were not preceeded by a fair apprais-ment of the property as required by the law of this State, and in the joint petition for the sale by John A. Buckner and Oliver T. Morgan, executor, there was a fraudulent misstatement of facts. For example, these petitioners represented to the court "that said estate is possessed of landed property, situated in this parish, which is not yeilding any revenues, and the only means of paying the debts is by means of the sale of the property thereof;" also one of the petitioners, John A. Buckner, stated that he was a large creditor, and the other, Oliver T. Morgan, assented to it and joined in the prayer for the sale to pay this debt, whereas the truth is the planta-

866 tions of Wilton, Albion and Melbourne were renting at $10 per acre; also that John A. Buckner, as a matter of fact, held no mortgage or preferred claim against the estate.

The said petition praying for the sale and for a new inventory and apprais-ment was filed on the 14th December, 1868. On the same day the inventory was filed in court without date, and with the signature of only one appraiser, W. D. Davis. It is proved by all the witnesses examined on the point that the signature of the other appraiser, M. Gingery, is not made to the inventory, for he could not write or sign his name except by making his mark; and it appears by this original inventory, now filed in this case, that M. Gingery's is written in a bold and good hand. See the original inventory and the testimony of W. G. Wyly, taken by Special Commissioner Wolfley. See also the testimony of James S. Milliken, C. A. Hedrick, and J. W. Montgomery, taken before S. D. Oliver, special commissioner.

Why was this indecent haste—this inventory and appraisement of five large plantations, 15,711 acres, made at Floyd, twenty miles from where the property was located, and returned without *without* date and filed in court on 14th December, 1868, the same day on which the petition for this inventory and sale was filed in court by Oliver T. Morgan and John A. Buckner?

867 We call the attention of the court particularly to the apprais-ment of all these plantations at the uniform price of $2.75 per acre, whereas the testimony of Henry Goodrich, the manager then in charge of these plantations, and other witnesses shows beyond doubt these lands varied in value from $75 per acre to $1.25 per acre. The total valuation of the five plantations, 15,711 acres, as set out in this pretended inventory, was $43,207.27. The same lands in October, 1860, were appraised at the taking of the inventory at that time at the aggregate value of $947,153.80.

Here, then, this pretended second apprais-ment fixed the valua-

tion of the property over $900,000 less than the apprais-ment of October, 1860. Who were these appraisers who rushed in and made the apprais-ment on the very day the application was filed for an inventory at the court-house in Floyd, 20 miles from where these plantations were situated? They were notoriously ignorant, feeble-minded, and incompetent to make a just and fair valuation of this valuable property. Gingery was a carpenter and Davis was a brick-layer, and both resided at Floyd and were wholly unacquainted with these plantations. Davis himself was examined, and he admitted he never saw these plantations, did not know where they were situated when he made the apprais-ment, and don't know
868 where they are located now. He did not know that Wilton, Albion, and Melbourne were renting at $10 per acre when he appraised them at Floyd in December, 1868, at $2.75 per acre. He swears when he appraised them he acted on the statement of others, and believed these were overflowed and abandoned lands. (See testimony of W. D. Davis, taken before S. D. Oliver, special commissioner, page —.) As to the capacity of Gingery and Davis to make this apprais-ment, we particularly call the attention of the court to the testimony of the witnesses C. A. Hedrick, James M. Milliken, N. D. Ingraham, S. T. Lemay, and other witnesses who were examined by S. D. Oliver, special commissioner.

Ingraham says Gingery and Davis were feeble-minded and notoriously incompetent to value property. He says Davis was generally known as "fool Davis" in the neighborhood where he lived. Lemay says two more incompetent persons could not be found to make the apprais-ment. Hedrick and Milliken swear that the appraisement of lands like Wilton, Albion, and Melbourne at $2.75 per acre looks more like a farce than a serious valuation because the lands were yielding a rent of $10.00 per acre at the time; and they both testify that they were well acquainted with M. Gingery and W. D. Davis; "that these two persons were notoriously incompetent
869 to fix a just valuation on river lands," and that competent men could have readily been found to appraise the property.

It is manifest that no effort was made or desired by these parties—Oliver T. Morgan, John A. Buckner, and their attorneys—to get a fair apprais-ment or to make a fair sale of these valuable plantations, because they were doubtless anxious to get titles of this property to themselves, and they attempted to do so at a mere nominal sum at these fraudulent adjudications of the 19th January, 1869.

We particularly call the attention of the court to the testimony of Thomas B. Rhodes, taken by Special Commissioner S. D. Oliver, pages 32 to 40. He testified in substance that on 19th January, 1869, he started with John Lynch, who was prepared and desired to buy, to attend the sale, which was to take place that day at Wilton plantation; that he and Lynch met J. W. Montgomery and Ferdinand M. Goodrich, attorneys, going to the sale; that Lynch inquired the terms and expressed a desire to buy one or more of the plantations in behalf of the wealthy firm of Lynch, Ruggles & Co., of which John Lynch was a member, but that he was discouraged and induced not to attend the sale by the statements and representations of Goodrich,

the attorney for the estate, who stated that the sale was a family
870 affair, and that if he, Lynch, bought he would only get a law-suit, or some such remarks.

J. W. Montgomery himself in his testimony admits that there was such a conversation; but he says substantially that Goodrich told Lynch the object of the *of the* sale was to collect a large claim due the family (meaning John A. Buckner) from the estate.

We ask the court to read carefully the testimony of Thomas B. Rhodes, because the truthfulness thereof, it seems to us, cannot be doubted when the court observes the anxiety of all these parties—F. M. Goodrich, J. W. Montgomery, Oliver T. Morgan, and John A. Buckner—to hurry through this sale and get for themselves the title to the valuable plantations. They selected a quiet place for the sale—the Wilson plantation—where few persons came or were likely to come; and as these parties who got up the sale all wanted a part of the lands it is quite natural they should wish to receive the adjudications at or near the convenient valuation fixed in the pretended apprais-ment of Gingery and Davis, and they wished to avoid any competition among bidders. It is quite natural that these attorneys, who were managing the sale in the interest of Oliver T. Morgan's family and John A. Buckner, as well as for themselves, should not wish John Lynch to be at the sale as a bidder, and therefore he was discouraged and persuaded off by F. M. Goodrich.

871 By good management the sales occurred on the 19th January, 1869, to the entire satisfaction of those who got them up, but to the ruin of the estate and creditors. Very few persons attended the sale, as was expected, from the place selected; the appraism-ent was suitable, as was to be expected from the appraisers who were selected and the time and place where it occurred, and, there being no competition among bidders, Buckner and Oliver T. Morgan and their attorneys had their own way about everything, and had adjudications of the property made on terms and in parcels to suit their own wishes; so the executor and the attorney of the estate, in disregard of judiciary and professional obligations, cheerfully joined hands with Buckner and his attorneys; they worked up the sale; were all benefited in the distribution of the spoils.

But when they came to ask the court to homologate these fraudulent proceedings and to discharge the executor without accounting for $38,200 of personal property and the large amount of revenues derived from this estate, Thomas O. Meaux and one or two other creditors filed oppositions, charged fraud, denied the existence of the pretended mortgage claim of John A. Buckner, and resisted the demand on various grounds.

872 Did the defendants meet these charges? No. They dared not do so. They settled with the opponents, whose claims were not large, because they feared to go to trial. To pacify Thomas O. Meaux and to get him to withdraw his opposition so that the account could be homologated, John A. Buckner bought up his claim by conveying to him part of the Melbourne tract at about $100 per acre. (See certified copy of the deed to Meaux, filed in evidence, and see testimony of E. J. Delony, taken by S. D. Oliver, special com-

missioner.) Wm. Gay and most of the large creditors resided out of the State; having Sparrow & Montgomery or F. M. Goodrich for their attorneys, they felt no anxiety and knew nothing of these proceedings. Sparrow had not only addressed encouraging letters to Wm. Gay in regard to recovering his claim, but Oliver T. Morgan, executor, gave him great encouragement. On 28th September, 1866, Oliver T. Morgan wrote to Wm. Gay urging him to consent that the heirs should divide the property and that each one would assume his or her share of the debts, and in this way the property could be made more available and the creditors be paid earlier. (See letter of Oliver T. Morgan, filed in evidence.)

Is it surprising that under these circumstances no opposition was made by Wm. Gay and other non-resident creditors, and that
873 the defendants, by the means resorted to, should obtain a homologation of their fraudulent proceedings?

We think the evidence shows beyond doubt—

1st. That Edward Sparrow, of the firm of Sparrow & Montgomery, was employed as the attorney of Wm. Gay.

2nd. That no price was actually paid at any of these fraudulent adjudications on the 19th January, 1869.

3rd. That John A. Buckner had no vendor's privilege or preferred claim for $67,495.70 bearing on these plantations of said succession for the payment of which these pretended sales were made.

4. That whether he did or not the adjudication to him of Wilton, Albion, and Melbourne plantations was void, because he paid no cash, and the executor had no right in the interest of his own family and of Buckner to alter the terms of sale fixed by the court for cash, and the place selected was in violation of positive law.

5. The evidence shows that neither Buckner nor his attorney, J. W. Montgomery, gave any receipt or acknowledgment of payment of any part of the pretended mortgage claim as a voucher or evidence of payment of the price of adjudication to John A. Buckner.

6th. That the pretended sale produced no change of possession, as Buckner admits, when he declares he held Melbourne before the
874 sale and the heirs of Julia Morgan, Wilton and Albion, and after the adjudication these plantations remained in charge of himself and the heirs of Julia Morgan, just as they did before; that he never got possession nor sought to get possession of Wilton and Albion.

7th. That John A. Buckner was an interposed party, so far as Wilton and Albion plantations are concerned, for although the adjudicatee of Wilton, Albion, and Melbourne he never pretended to claim any of them under the adjudication except Melbourne. He declares he bought in the property for the heirs, and out of respect for the will of Oliver J. Morgan he took only Melbourne and left Wilton and Albion (three-fourths of the thing adjudicated) to the heirs of Julia Morgan.

8th. The evidence shows that the adjudication of Westland lands to J. W. Montgomery, agent, was a mere simulation and utterly void for want of consent, for want of a price, and for want of an actual purchaser. J. W. Montgomery admits in his evidence that no price was

paid, and he had no authority to make the bid as agent for creditors.

9th. That the pretended preference claim of Sparrow and Montgomery for attorney's fees against the estate for $10,000 was wholly unfounded and invalid.

10th. That the adjudication of Morganna plantation to F.
875 M. Goodrich was fraudulent and simulated, because it is proved he paid no cash; he was the attorney for the estate, and he had no right to advise the executor to change the terms of sale fixed by the judge, for cash, and accept from him, in lieu of cash, the fraudulent and void claim of Sparrow & Montgomery, who had rendered no professional services for the estate, as the mortuary papers show, up to the time of said adjudication to F. M. Goodrich; that F. M. Goodrich, the attorney for the estate, ought not to be permitted to derive personal benefit by a betrayal of professional obligations; he should have protected the interest of the estate and defeated this false claim of Sparrow & Montgomery.

11th. The evidence of W. A. Johnson shows that F. M. Goodrich was to some extent an interposed party in this pretended purchase by him of Morganna plantation, because, although he was the adjudicatee, J. W. Montgomery held a secret joint interest in said plantation, which was afterwards acquired from Montgomery in the settlement of ten or twenty thousand dollars due by said Montgomery to the commercial firm of Johnson & Goodrich, composed of said F. M. Goodrich and W. A. Johnson.

12th. That there was no fair apprais-ment—indeed, no legal apprais-ment was made before the sale, as required by the law
876 of this State—because it is shown that the pretended appraisement rendered on the 14th December, 1868, the very day it was applied for, was made by only one appraiser, W. D. Davis, the name of the other appraiser, M. Gingery, not being signed to the oath of the appraisers and to the report of the apprais-ment; that these two persons, M. Gingery and W. D. Davis, were notoriously feeble-minded and incompetent; that they, in the pretended apprais-ment, valued all the land at the same price, viz., $2.75 per acre, whereas the proof is the value varied from $75 to $1.25, and that W. D. Davis admitted, as a witness, he never saw the plantations when he appraised them, did not know where they were situated, and does not know now; that he did not know, when he valued Wilton, Albion, and Melbourne at $2.75 per acre, that they were actually renting at $10 per acre, and that in appraising the property he acted only on representations of others, believing that these lands were wild and overflowed lands.

13th. The evidence of Thomas B. Rhodes shows that F. M. Goodrich discouraged and persuaded a bidder (with means and anxious to buy one or more of said plantations) not to attend the sale, saying, in substance, it was a family matter and he could get no title if he bought.

14th. The evidence shows that the Westland lands—5,040
877 acres—pretended to be conveyed to the creditors, was of little or no value, located in the swamp eight miles from the river, and had only a nominal value of $1.25 per acre.

15th. That Wilton, Albion, and Melbourne plantations, 9,171 acres, adjudicated to John A. Buckner at $3 per acre, were actually worth from thirty to fifty dollars per acre, and the annual net rental of these lands is $15,000. Witnesses in support of this valuation are Henry Goodrich, C. A. Hedrick, James S. Milliken, N. D. Ingraham, S. T. Lemay, T. B. Rhodes, E. M. Devine, C. M. Tilford, J. W. Ervine; also John A. Buckner admits in his evidence that $3,000 acres of the open land adjudicated to him at $3 per acre was worth actually $20 per acre, nearly seven times more than the amount he bid; also the tax roll of 1868 shows that the 9,171 acres adjudicated to John A. Buckner at $27,513 was valued by the officers who made that assessment under oath at $136,000 in the aggregate; also the deeds from Buckner to Thomas O. Meaux and Cain Sartain (filed in evidence) show that John A. Buckner has been selling parts of the Melbourne tract at from $80 to $110 per acre.

16th. The evidence shows that Oliver T. Morgan, executor, and the heirs received, sold, and appropriated the crop of 1860 yielded by Wilton, Albion, Melbourne, and Morganna plantations, proved by John A. Buckner himself to have been 2,500 bales of cotton worth $90,000.00.

878 17th. That the value of the mules, wagons, household furniture, plantation implements, and other personal property of deceased which has not been accounted for is $38,200.00.

18th. That the present executor, Matt. F. Johnson, has collected from the Government for abandoned cotton during the war for said estate $21,870.60.

19th. That John A. Buckner collected rents from Tibbetts, due the estate in the year 1866, $3,000, and has had and enjoyed the large revenues of Melbourne since the year 1860, and for which he has not accounted.

20th. The evidence shows that the revenues of Wilton, Albion, and Melbourne have been received and enjoyed by John A. Buckner and the heirs of Julia Morgan, and they approximate the sum of $200,000.00, and that these revenues have not been accounted for, nor were they taken into account in the division of the property among the heirs in these pretended sales in payment of their pretended claims against the estate.

21st. We claim that from all these facts there must have been a fraudulent combination between John A. Buckner and his attorney, J. W. Montgomery, on the one hand, and Oliver T. Morgan, executor, and F. M. Goodrich, the attorney for the estate, on the other hand,

879 because, as skillful and plausible as their plans has been laid and executed, and from the facts stated, there is no doubt that these parties sought, without an actual adequate price, to get for themselves the valuable plantations of the estate (inventoried in 1860 at $947,153.80), and they anxiously desired to get the executor discharged without accounting for the value of personal property and revenues of the estate, aggregating about $200,000.

Now, how could this result, beneficial to these defendants, but ruinous to the estate and its creditors, be accomplished without a fraudulent combination among these defendants?

F. M. Goodrich, the attorney for the estate, was under professional obligations to his client (the estate and its creditors) to give the executor proper advice and to see that the legal rights of that client were protected by a court.

The executor was under the responsibility of a trustee. His first duty was to protect the estate and its creditors from the fraudulent and fictitious mortgage or preferred claims set up by John A. Buckner and the law firm of Sparrow and Montgomery; his solemn duty was to discountenance and defeat any scheme or attempt that might be made by designing persons to force the property on the market at an unreasonable time and subject it to be sacrificed. It was his duty to call a meeting of the creditors if John A. Buckner and Sparrow and Montgomery had valid mortgage and preferred claims;

880 above all, his most sacred duty was to withhold any desire or effort to subserve the interest of the heirs to the prejudice of the creditors of the estate, even though his own daughter and the children of his wife, Julia Morgan, would be benefited.

If Sparrow and Montgomery were the attorneys of Wm. Gay and had his claim for collection, as we claim the proof shows, then their professional obligations should have restrained them from joining in this combination to bankrupt the estate and destroy the rights of their client, Wm. Gay; they could not join hands with Buckner and aid him to get Wilton, Albion, and Melbourne at the farcical price of $3 per acre, while these lands were renting for $10 per acre; and above all they could not, in duty to their client, draft that fraudulent account and procure the discharge of this delinquent executor, Oliver T. Morgan, without requiring him to set down on his account and account to the court for the large amount of personal property and the rents and revenues of the estate, amounting in the aggregate to about $200,000.

In view of the facts disclosed in this case, the fraud, the simulation, the disregard of fiduciary and professional obligations, the fraudulent collusion of the defendants, and the great moral wrong they have inflicted on the estate and its creditors, we appeal to this court and ask for adequate relief. Ought not these fraudulent and

881 simulated sales *to* set aside and the defendants be compelled to restore to the estate of Oliver J. Morgan all these valuable plantations, together with the large revenues and personal property belonging to said estate, to the end that there may be an honest settlement of the affairs of said estate and complainant and other creditors be paid what is justly owing to them? For eighteen years complainant has been delayed and hindered by the combination of these defendants in recovering his claim against the estate, and he now looks with confidence to this court for relief.

The intention to deprive the creditors of their rights against the succession property is conclusively established by the document filed in evidence, marked ——, signed by Sparrow & Montgomery, as attorneys for the heirs of Oliver J. Morgan. Though there is no date to it, yet the contents show that it was executed after the pretended sale had taken place.

It is thereby established—

1st. That Sparrow & Montgomery were the attorneys for the heirs of Oliver J. Morgan.

2nd. That Buckner did not, as is pretended in the sheriff's return, become the purchaser, but that the heirs divided the property.

3rd. That the sale did not take place to satisfy Buckner's imaginary preferred claim, but that it was a scheme to shield the succession property from the pursuit of its creditors.

4th. That none of the creditors have affixed their signatures to this proposition, and consequently it is not binding on them.

882 5th. That an additional inducement was held out to the creditors by the promise that they were to receive the money recovered from the United States Government, but no part of it was ever distributed; not one dollar of it is accounted for.

To conclude: We call the attention of the court to the testimony of Edward Sparrow and J. W. Montgomery. The former says: "I was the attorney-in-fact and attorney-at-law of Oliver T. Morgan, executor of the estates of Oliver J. Morgan and Julia Morgan; became said attorney as early as the year 1866 or 1867." It is in evidence that in February, 1866, he received Wm. Gay's claim against the estate. "That there were creditors of said estate to large amounts; that the succession of Julia Morgan, the daughter of Oliver J. Morgan, had a large claim growing out of the community between Oliver J. Morgan and her mother; that it was contemplated by Julia Morgan and other heirs to proceed to have their claims against the succession proceeded on at once, and have property sold to pay the same, and which demands were claimed to be privileged." So says the witness—they were claimed to be privileged. By whom claimed? Did any court decree so? In fact there was no privilege whatever.

The witness continues: "That some of the creditors were anxious to have some compromise or settlement, so that the whole estate might not be absorbed by the claims of the heirs; that

883 affiant was informed and believes that such a settlement was made (By the heirs? Yes. By the creditors? No), although he took no part therein, being absent from home at the time, and only learned of it after the same had been made and after his return. When informed of the settlement he approved the same, believing it was the best arrangement that could have been made in the interest of all parties." So says this witness. He may have approved of it as the attorney-in-fact of Oliver T. Morgan, executor, or as his attorney-at-law, and as the attorney of John A. Buckner, and his approval is evidenced by the proposition of the agreement above referred to, signed by Sparrow & Montgomery, as attorneys for all the heirs of Morgan. Did he also approve it as the attorney or "friend" of the complainant; and, if so, by what authority? So much for the testimony of Edward Sparrow.

Now, listen to J. W. Montgomery: "In the years 1867 and 1868 the heirs of Mrs. Narcissa Morgan, deceased, wife of Oliver J. Morgan, had a large claim against the estate of said Oliver J. Morgan, secured by mortgage on his property, and which they were proceeding to enforce against the estate by the sale of property aforesaid."

This statement is not true, because there was no mortgage. It is doubtful whether there was an ordinary debt. There were no proceedings to enforce a mortgage. The entire record of the *of*
884 *the* succession is in evidence; nothing of the kind will be found in it; it was a sham to obtain from the probate court the order of sale of the succession property to carry out their scheme and, if possible, to mislead the creditors by their false allegations.

The witness further on says that he, in conjunction with others who had claims against said estate, proposed to compromise, and this proposition is contained in the documents signed by Sparrow and Montgomery, attorneys for the heirs of Oliver J. Morgan, wherein, under the false pretension that the entire estate would be swallowed up by fictitious mortgage-, they try to induce absent creditors to accept a worthless body of swamp lands in satisfaction of just claims against a highly valuable and solvent estate, and thereby to obtain from them a ratification of their purchases, which were in violation of law, justice, and equity, and thus deprive complainant of his rights on the property belonging to the succession of his debtor.

We have deemed it advisable to submit to your honor the foregoing synopsis of the facts of this case establishing fraud and simulation, which seems too clear to admit of argument. We can safely rest here, reserving only the right to furnish a *breif* on the law bearing on this case when deemed necessary.

(Signed) LABATT, ARONI & CLINTON,
KELLY & LAZARUS,
W. G. WYLY,
For Complainants.

885 (Endorsed:) Boyd *vs.* Wyly *et al.* Exhibit No. 1. Filed on the part of complainant August 4th, 1882. (Signed) M. M. Cohen, U. S. comm'r.

Filed May 12th, 1883.

WM. RAY,
D'y Clerk.

(Signature on the back of *breif*: H. L. Lazarus.)

EXHIBIT No. "2." Referred to and made part of the foregoing testimony. Offered in evidence by complainant before special examiner August 4th, 1882.

Statement of cotton shipped from Raleigh plantation to Samuel Freidlander for sale for account of Mr. W. G. Wyly from the year 1868 to 1879, both inclusive:

1868, about	8	bales.
1869, "	111	"
1870, "	157	"
1871, "	228	"
1872, "	107	"
1873, "	280	"
1874, "	398	"

1875,	"	----------	443	"
1876,	"	----------	500	"
1877,	"	----------	358	"
1878,	"	----------	533	"
1879,	"	----------	15	"
			3,138	bales.

886 E. & O. E.
New Orleans, August 3rd, 1882.
(Signed) SAMUEL FREIDLANDER,
Per JUSTUS VAIRIN.

Exhibit Samuel Freidlander.

(Endorsed:) Boyd *vs.* Wyly. U. S. C. C., 5th C., western district of La. Filed on the part of complainant August 4th, 1882. (Signed) J. B. Beattie, special examiner.

Filed August 11th, 1882.

J. B. BEATTIE,
Special Examiner.

ON BOARD ST. LOUIS AND VICKSBURG ANCHOR LINE STEAMER "CITY OF VICKSBURG," *August 10th*, 1882.

J. B. Beattie, Esq., U. S. commissioner in suit of M. E. R. Boyd *vs*, W. G. Wyly, No. 1, U. S. circuit court for western district of La.. Lake Providence, East Carroll parish, La.

DEAR SIR: Pursuant to the notice given complainant's counsel in the above-entitled case by John T. Ludeling, Esq., defendants' counsel, that defendants would commence to take testimony this day in the town of Lake Providence, La., I did this morning present myself before you, in said town of Lake Providence, in the office of said W. G. Wyly, for the purpose of taking said testimony.
887 And the said Wyly being then and there present refused to proceed with the taking of his testimony, and likewise refused to name any day certain on which he would commence taking testimony in his behalf, and declared that he had not notified complainant's counsel that he would begin taking his testimony on this 10th day of August, 1882, and that he knew nothing of any notification given by his said counsel, J. T. Ludeling, Esq. The said Wyly farther declared that he could not proceed on account of the absence of his counsel, J. M. Kennedy, Esq., whom he had instructed to notify complainant's counsel in New Orleans that he would not commence taking testimony on said August 10th. The said *said* Kennedy was, on August 2nd, 1882, in New Orleans, in the office of complainant's counsel, and said nothing of any postponement in the time of taking testimony by defendant. The said Wyly farther declared that he had telegraphed to *defendants* complainant's counsel in New Orleans his intention to postpone the time of taking his testimony. This telegram, alleged to have been sent on August 6th, 1882, was not received when I left New Orleans on the

evening of August 7th, 1882. Furthermore, the above-named J. M. Kennedy is only nominally of counsel for defendants, and has declared to me that he knew nothing of the case and has heretofore taken no part whatever in the examination of witnesses and has not been present during said examination as much as ten minutes altogether.

888 I am, therefore, impressed with the conviction that said Wyly is not acting in good faith; he professes not to have notified complainants that he would begin taking his testimony on said August 10th; in the same breath he professes to have telegraphed complainant notice of his intention to postpone the holding of an examination which he had just asserted he had never notified complainant would be held. He gives as an excuse for not proceeding the absence of a gentleman who has previously taken no part in and is now wholly ignorant of the case. Finally, when I pointedly requested him to name a day on which he would proceed with his testimony he refused to do so. I could not remain indefinitely at Lake Providence awaiting said Wyly's caprice. I came, pursuant to his notice, and offered to proceed with the taking of testimony. He refused to begin or to give any reason for his refusal that was not the merest pretext and sham. In view of these facts, I am forced to beleive that said Wyly does not intend to make any effort to substantiate his defence by testimony, but that his sole object is to subject complainant and her counsel to trouble, annoyance, and expense. As he has refused to act pursuant to the notice already given by him, and this arbitrarily and without sufficient reasons, complainant's counsel must henceforth decline to regard any notice from him not transmitted through you.

889 And complainant will request the court to tax as costs against said Wyly the expenses incurred by her undersigned counsel in attending at said Wyly's request an examination which he had no intention to hold. Complainant will further insist whether her counsel hereafter do or do not attend the taking of testimony on behalf of said Wyly; that the said Wyly has by his above-recited doings waived and renounced his right to take any testimony in this case in his own behalf.

Be pleased at once to communicate this to said Judge W. G. Wyly and file it among the papers of said above-entitled suit, and at the same time inform said Wyly that any notice whatever in relation to this suit, proceeding either from himself or from any of his counsel, will not be regarded by complainant as serious, unless transmitted through you or some other officer of the court.

Very respectfully,

(Signed) E. D. SAUNDERS, OF
MOTT, KELLY & SAUNDERS,
Solicitors for Complainant.

890 "B. No. 2." Filed August 12th, 1882. J. B. Beattie, Special Examiner.

United States Circuit Court for the Western District of Louisiana.

M. E. R. Boyd
vs.
Wm. G. Wyly *et al.* } No. 1.

To J. B. Beattie, Esq., United States commissioner in above-entitled suit.

Dear Sir: I request you, conformably with the 5th paragraph of rule 67 of the equity rules promulgated by the Supreme Court of the United States, to fix a reasonable time by order in this case for notice as to the taking of testimony. The paragraph in question reads as follows: "Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties of the time and place of the examination for such reasonable time as the examiner may fix by order in each cause."

Under this paragraph I respectfully request you to make an order in this cause directing each counsel to give the opposing counsel ten (10) days' notice of the time and place when and where the counsel giving the notice proposes to take testimony on behalf of his client.

Judge Wyly stated to me in your presence that he would
891 not require more than a week for taking his testimony.

Considering this statement of Judge Wyly's, and his further suggestion that he might begin taking his testimony about the 25th or end of this month, likewise made in your presence; considering the distance from New Orleans to Lake Providence and the time required to make the journey between the two places; considering, further, that on the written notice of Judges Wyly's counsel, Jno. T. Ludeling, Esq., I presented myself in Lake Providence on the 10th of this month, & offerred to proceed with the taking of testimony; that Judge Wyly refused to begin the taking of his testimony, or even to open proceedings on said day; that he denied that he had given or caused to be given any notice that testimony on his behalf would be taken on that day; that he refused to say, when I expressly inquired of him, on what day he would begin taking his testimony; that he vaguely indicated that he would begin taking his *of his* testimony towards the end of this month—considering all these things, I think the notice I require is a reasonable one. If the statements which Judge Wyly made in your presence in regard to the time he would require for taking his testimony, and the time at which he would probably begin taking it, are true—and they should certainly be taken as true against himself—he will still have, even after giving me ten days' notice, about twice as much time as he said he would require, and he can

892 begin at the earliest day that he mentioned; to require me to come up again in less than ten days' notice would subject me to great and unnecessary inconvenience. As I have already attended once at Judge Wyly's notice, and he took no action and gave no valid and satisfactory reason for his inaction, it is but just

to me and he will have no right to complain if you, in the exercise of the discretion conferred upon you by the above-mentioned rule, make an order which, on Judge Wyly's own statements, will in no manner interfere with his rights and will serve to protect me from the abuse of the defendant's power to summon me to take testimony, which he does not intend to take.

I shall object to the taking of any testimony on less than ten days' notice to me of the time and place at which the same is to be taken and shall urge this objection in court. Meanwhile I must insist that you make some order in this matter and notify it to both sides without delay.

And I, respectfully, submit that, in view of the circumstances above detailed, ten days is the proper period. File this in the papers of the suit and communicate your decision.

Very respectfully,

(Signed) EUGENE D. SAUNDERS, OF
MOTT, KELLY AND SAUNDERS,
Solicitors for Complainant.

New Orleans, August 11th, 1882.

893 United States Circuit Court, 5th Circuit, Western District of Louisiana. In Equity.

Mrs. MARY E. R. BOYD
vs.
W. G. WYLY *et als.*
} No. 1.

Appearances: For complainant, H'y B. Kelly, Esq.; for defendants, Jas, R. Beckwith, Esq., and Jas. M. Kennedy, Esq.

Testimony taken in the above entitled and numbered suit under the 67th rule of practice of the courts of equity of the United States, before J. B. Beattie, special examiner, duly appointed and qualified to take the deposition of witnesses in the above-entitled cause, New Orleans, La., Dec'b'r 12th, 1882, and Febr. 26th & 27th, 1883.

Witnesses: Mrs. Mary E. R. Boyd, W. G. Wyly, Julius Aronie, E. J. Stiles, Eugene D. Saunders, F. H. G. Taylor, James Beard, R. C. Green, F. F. Montgomery, H. Gibbs Morgan.

894 *Petition for Order to Take Testimony Orally and for Appointment of Special Examiner. Filed December 11th, 1882.*

Circuit Court of the U. S., Western Dist. of La., Sitting at Monroe. In Equity.

Mrs. M. E. R. BOYD, by Her Next Friend, etc.,
vs.
W. G. WILY *et als.*
} No. 1.

To the judges of the circuit court of the United States for the western district of Louisiana:

The petition of the complainant, Mary E. R. Boyd, by her next

friend, James R. Boyd, respectfully represents that she desires that the testimony in this cause upon the issues joined by the bill as amended and answers thereto should be taken orally, and that a special examiner be appointed for that purpose, and has notified the defendants thereof.

She therefore prays that your honors will order said testimony to be taken orally, and will name a special examiner to take said testimony in New Orleans and elsewhere.

(Signed) MOTT, KELLY AND SAUNDERS,
For Complainant.

895 *Notice.*

U. S. Circuit Court, Western Dist. of La., Sitting at Monroe. In Equity.

Mrs. M. E. R. BOYD, by Her Next Friend, etc., vs. W. S. WYLY *et als.* } No. 1.

SIR: You are hereby notified, in conformity to equity rule 67, that the complainant desires the testimony in this cause to be taken orally, and shall apply to the court for the appointment of a special examiner for that purpose.

Nov. 26, 1882.

MOTT, KELLY AND SAUNDIRS,
For Complainant.

To J. R. Beckwith, Esq., solicitor for W. G. Wyly.

Henry B. Kelly, being sworn, says he served a copy of the foregoing notice on J. R. Beckwith, Esq., on the 26th of November, 1882, by leaving the same at his office, No. 9 Carondelet Str., New Orleans, in the hands of E. Hierland, Esq.

(Signed) HENRY B. KELLY.

Sworn to and subscribed before me this 27th day of November, 1882.

[SEAL.] (Sig.) SAM. FLOWER,
Notary Public.

896 *Order.*

Let the testimony in the cause be taken orally, as prayed for, and according to law, and let J. B. Beattie be appointed special examiner to take said testimony in New Orleans and elsewhere.

This done and signed in chambers, at Shreveport, La., Nov. 30, 1882.

(Signed) ALECK BOARMAN,
U. S. Judge.

Notice of Taking Testimony.

U. S. C. C., 5th Circuit, Western Dist. of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

To Mr. Jas. R. Beckwith, solicitor for def't-, N. O., La.

DEAR SIR: Please take notice that by virtue of an order of the honorable the judge of the U. S. C. C., issued in the above entitled and numbered cause, the examination of complainant in her own behalf will be held at the office of Mess. Mott & Kelly, No. 13
897 Commercial alley, N. O., La., Dec. 12th, 1882, at 10 o'clock a. m., before the undersigned.

(Signed) J. B. BEATTIE,
Special Examiner.

Served a copy of the above notice on Jas. R. Beckwith, Esq., solicitor for def't, by handing a copy of the same to him in person at his office, in the city of N. O., Dec. 11th, 1882.

(Signed) J. B. BEATTIE,
Special Examiner.

1*st Day.*

N. O., *Dec.* 12*th*, 1882.

Present: J. B. Beattie, special examiner; H'y B. Kelly, Esq., solicitor for complainant; Jas. R. Beckwith, Esq., solicitor for def't.

Mrs. MARY E. R. BOYD, complainant, wife of Fred. W. Boyd, sworn and examined in her own behalf.

Direct examination by Mr. KELLY:

Question. Mrs. Boyd, you are the complainant in this equity suit against W. G. Wyly and others, for yourself, for the recovery of "Raleigh" plantation, in East Carroll parish?

Answer. Yes, sir.

Q. The bill is filed in your behalf by your next friend and son, J. R. Boyd, of Waukesha?

A. Yes, sir.

Q. Will you state what his age is?

898 A. He was born the 13th of August, 1846.

Q. It is alleged in this bill that a certain sale was made of the "Raleigh" plantation, in the parish of Carroll, new the parish of East Carroll, on October 20th, 1868, at which defendant, William G. Wyly, became the purchaser. Will you state whether you ever received any citation or notice of any proceedings from court of the sale of this place?

A. No, sir; I never received any such citation or notice.

Question. Had you any knowledge of the pendency of the proceedings to sell *to sell* "Raleigh" plantation?

A. I had not.

Question. When did the fact that it had been sold—that there had been a sale under some order of court—when did that fact first come to your knowledge?

A. I don't know exactly; in the fall of 1868; I don't know exactly when my nephew, S. S. Boyd, told me of it first.

Question. Was that before or after the sale?

A. That was after the sale; that was in the fall.

Question. The sale had already taken place when you first heard of it?

A. Yes, sir; it had.

Q. What action did you take when you first heard of the sale?

A. For want of means I could not do anything legal until I found a lawyer who was willing to take charge of the case and to take his fee out of the result.

Q. State when this was, and what followed.

A. This was in 1872.

Q. Who was the lawyer?

899 A. Well, Labat & Aroni were my attorneys; they had the case in charge.

Q. Then what followed?

A. I heard nothing of it at all for some years; I supposed it was going on.

Q. Well, what next?

A. Mr. Mott then took the case.

Q. State what your attorneys, Labat & Aroni, did in the case.

A. They did not do anything.

Q. Then you ascertained your attorneys, Labat & Aroni, had not done anything?

A. Yes, sir; I ascertained it through Col. Charles R. Railey.

Q. But when?

A. I can't tell you what year it was; I don't know what year it was; it was some years afterwards—1875 or 1876—I am not sure.

Q. Will you state where your husband, the Rev. Dr. Boyd, was during the summer of and fall of 1868?

A. Yes, sir; he was at "Kilmarnock," over home, in Mississippi.

Q. State where that is.

A. Near Natchez.

Q. State whether or not he was in the parish of Carroll during that summer.

A. He was there in January, 1868, but I don't know whether he was there in the summer of 1868; I have no notes with me; I can't say, but I know he was there in Jan'y because he went there on business for me.

Q. You don't know whether he was there afterwards?

A. No, sir; I do not.

900 Q. Was anybody in charge of "Raleigh" plantation for him during that time?

A. Yes, sir; Mr. Craig—W. R. Craig.

Q. State who he is.

A. The former overseer, now a planter near there, and his son, Scott Craig.

Q. Where did he live then?
A. In the neighborhood.
Q. Your husband, was he or was he not well known in Carroll parish and in Mississippi—in Natchez?
A. Yes, sir.
Q. What is his profession?
A. Clergyman of the Episcopal church.
Q. He is an Episcopal clergyman?
A. Yes, sir.
Q. From your knowledge of where he was during that year would or would not any person in the parish of Carroll having occasion to communicate with him on business been enabled to do so?

Objected to. Question withdrawn.

Q. Do you know J. West Montgomery, of East Carroll parish?
A. Yes, sir.
Q. Do you know whether or not he was acquainted with your husband?
A. He was.
Q. Do you know whether or not he could have communicated with your husband if he desired to do so during the fall & *and* summer of 1868?
901 A. Yes, sir; I should suppose so.
Q. Do you know whether or not any persons desiring to communicate with your husband during that time could have done so?
A. Why, certainly.
Q. Was he or not a man widely known in the neighborhood of Natchez and Carroll parish?
A. He was.

Admission.

It is admitted by council for def't that the signature of H. Otey Railey to the disclaimer filed and marked Exhibit "A" is his genuine signature.

Cross-examination by Mr. BECKWITH:

Q. You resided in the parish of Carroll at one time with your husband?
A. I have spent a good many summers there during my father's life and afterwards.
Q. Where you and your husband ever residents of the parish of Carroll?
A. No, sir.
Q. Where did you reside at the time of your marriage?
A. In Vicksburg.
Q. What year was that?
A. 1844.
Q. You both resided in Vicksburg?
A. Yes, sir.

Q. How long where you resident of Vicksburg—about how long?

902 A. About a year.

Q. Then where did you go to reside?

A. At my father's for awhile.

Q. With your husband?

A. Yes, sir.

Q. Where—in what place—with your father?

A. Oakland, Mississippi.

Q. Where was your residence after that?

A. In 1848 we moved to Port Gibson.

Q. That is also in Mississippi?

A. Yes, sir.

Q. How long did you reside at Port Gibson?

A. About a year.

Q. Then where?

A. Then New Orleans; we staid here about a year.

Q. Then where did you reside?

A. Then Adams Co., Mississippi.

Q. Where did you reside at the time of the death of your father?

A. Adams Co., "Kilmarnock," Adams Co., Mississippi, near Natchez.

Q. Then after his death where did you reside?

A. Resided there at my own home.

Q. Up to what year?

A. 1871.

Q. Did you go from your home in Mississippi to Wisconsin?

A. I did, sir.

Q. Have you resided at your present home in Wisconsin, at Waukeska, during all this time?

903 A. Yes, sir; I lived at Watertown, near Waukesha, a little while.

Q. Then neither you or your husband were ever at any time actual residents of the parish of Carroll—East Carroll parish?

A. No, sir; I spent every summer there for some time.

Q. As visitors?

A. No, sir; at my home; it was bought for me as my home.

Q. Was that plantation (referring to Raleigh plantation) worked or carried on after the death of your father?

A. Yes, sir.

Q. By who?

A. By the executor, James Carson, my cousin.

Q. He died, did he not?

A. He died in Texas.

Q. That was prior or during the war?

A. During the war.

Q. Was it carried on after the negroes were removed—after the war was over—as a cotton plantation?

A. Yes, sir; it was released to me by Major Harrod; it had gone into the hands of the United States.

Q. Who was Major Harrod; was he an officer in the Federal army?

A. I don't know, sir.

Q. They had taken possession—the Federal authorities had taken possession of it?

A. Yes, sir.

904 Q. Well, now, after it came into your possession, was it worked as a cotton plantation; now, I mean after the war—after Major Harrod released it to you?

A. Yes, sir.

Q. And you never knew that there was any mortuary or probate proceedings going on in the court in Carroll parish relative to that property?

A. No, sir.

Q. You never knew that your father's will was probated there?

A. Oh, yes, sir.

Q. Did you know there was any executor or administrator of the property there?

A. James Carson.

Q. After James Carson?

A. Yes, sir; Dr. Boyd.

Q. Who is Dr. Boyd—your husband?

A. Yes, sir.

Q. Well, did you believe him to be executor or administrator after he went up to Wisconsin?

A. My brother's son, S. S. Boyd, informed me "Raleigh" had been sold years before.

Council for complainant object on the ground that it is irrelevant and immaterial and not pertinent to any of the issue tendered by the bill, it being altogether immaterial whether complainant believed or did not believe that Dr. Boyd, her husband, continued as administrator.

905 By Mr. BECKWITH:

Q. Then do I understand you to say you are unable to state whether you believed your husband continued to be administrator or executor of the successions of your father after he removed from Mississippi to the State of Wisconsin?

A. I decline to answer the question, Mr. Beckwith.

Q. Do you decline to answer because you don't know?

The WITNESS: Mr. Beckwith, I have already said I decline to answer the question.

Q. Then do I understand that you decline for reasons of your own to state whether you consider your husband as representative either as executor or administrator of the estate or succession of your father after he had removed from the State of Mississippi and become a resident of the State of Wisconsin?

A. He should have been if he was not; if he was it was all right.

Q. You think, then, he was representing the succession of your father after he removed to the State of Wisconsin?

A. I did not say that.

Q. Well, isn't it to your knowledge that after your husband removed to the State of Wisconsin he carried on suits in the Courts of Claims at Washington as the representative of the succession of your father and recovered money from the Government of the

906 United States as proceeds of cotton captured?

Council for complainant objects on the ground that it is totally irrelevant to any of the issues tendered by the bill; that it does not call in question in any way the administration of Fred. W. Boyd on the estate of James Railey or seek any account from him of such administration, the sole object of the bill being the recovery by Mrs. Boyd of the "Raleigh" plantation from the averment that it was bequeathed to her by the will of her father, mentioned in the bill; that it was fraudulent or collusively sold to the defendant, W. G. Wyly, for a mere nominal price, and the question whether or not Fred. W. Boyd collected claims of the estate is in no way involved in the suit; the question is therefore entirely irrelevant.

Solicitor for defendant insists upon the question and answer to it as proper and legitimate cross-examination.

Solicitor for complainant objected, and states there is no averment in the answer of defendant Wyly relating in any way to the matter referred to in the question.

NOTE.—Question read to the witness by the special examiner.

The WITNESS: I decline to answer it.

By Mr. BECKWITH:

Q. Why do you decline to answer it?

A. I think it best.

907 Q. Had you any knowledge of any suits carried on in the Court of Claims for the recovery of money from the United States Government for cotton captured during the war?

A. Mr. Beckwith, I have already declined to answer that question.

Q. Well, do you decline to answer because you don't know, or because you have reasons of your own for declining?

A. I think best not to answer.

Q. Had you at any time between 1868 or 1870 and the time you instituted this suit here obtained from your husband any notice or knowledge of what proceedings were had or being had in the sucession of your father?

A. Well, I respectfully decline, Mr. Beckwith, to enter into that subject.

Q. You decline to answer the question?

A. Yes, sir.

Q. Will you fix the date precisely when you first heard of the sale of "Raleigh" plantation?

A. I cannot under oath.

Q. Fix it as near as you can.

A. No, sir; I cannot fix it.

Q. Well, can you tell what year it was?
A. 1868.
Q. Some time in the fall, I think, you said?
A. Yes, sir.
Q. Was the estate of your father in Mississippi at that time under administration in court?
A. Mr. Beckwith, I am so confused I don't remember the day my mother died; I don't remember the date.

Counsel for complainant objects to the question as being irrelevant.

908 Q. About what time did you first opon communication with Lobat & Aroni?
A. In 1872.
Q. What time in 1872?
A. I don't remember, sir.
Q. You were living at that time in Mississippi, where you not?
A. Well, sir; excuse me; I am not sure whether it was in 1872 or not; I think it was in 1872; I am not sure.
Q. Now, what arrangement did you make with them?
A. That is a personal matter, Mr. Beckwith.
Q. You refuse to state what contract or agreement you made with Lobat & Aroni to litigate your interest in this "Raleigh" plantation in 1872?
A. Yes, sir.

Council for complainant objects to the question on the ground that it is totally irrelevant to any of the issues in the case, the real issue in the case being whether def't, W. G. Wyly, was the fraudulent possessor of the "Raleigh" plantation for a mere nominal consideration.

By Mr. BECKWITH:

Q. You refuse to state what that agreement was?
A. Yes, sir.
Q. You stated in your direct examination that you rested a long time in the belief that they were going on with the suit?
A. Yes, sir.
909 Q. Did you receive any letters from them indicating that they had instituted suit?
A. No, sir; I was in the office.
Q. Where did you live at the time you supposed Lobat and Aroni were prosecuting the suit for your interest in this plantation?
A. In Wisconsin.
Q. You made this arrangement in their office, did you?
A. Yes, sir.
Q. How long did you remain in New Orleans at that time?
A. I don't know exactly; about a month or so. I was visiting at Charles Railey's, my cousin.
Q. Now, then you went back to Wisconsin?
A. Yes, sir.

Q. Well, when did you return to the city of New Orleans again?
A. I don't remember, Mr. Beckwith.
Q. Well, about what time?
A. Three (3) or four (4) years ago.
Q. Was it before or after the great epidemic of 1878?
A. After.
Q. Then, during all this period from 1872 to the period of 1878 you supposed there was a suit pending against the def't Wyly to recover back this plantation?
A. No, sir.
Q. You knew there was no suit, then?
A. Well, I had been informed before that time that Mr. Aroni had given up the suit.

910 Q. When were you first informed that there was no suit and that Lobat and Aroni had given up the suit? Give us the date.
A. I don't know, Mr. Beckwith.
Q. Well, can't you approximate it? Was it before you came down here in 1878?
A. I can't say when it was.
Q. Well, about how many years ago do you think it was? You can approximate it.
A. I don't know, Mr. Beckwith.
Q. You remember the time there was such a serious epidemic here, in 1878, don't you?
A. Yes, sir.
Q. Was it before that time?
A. I think it was before that.
Q. Well, was the arrangement with Mr. Mott made at Waukesha?
A. Yes, sir.
Q. The first time you was in Waukesha?
A. Yes, sir.
Q. Your husband is settled in some church there, is he?
A. He has resigned; he lives at home.
Q. You was living with him, I suppose?
A. Yes, sir.
Q. Have you ever taken any proceedings in your own name in any of the courts of Louisiana relative to the "Raleigh" plantation, except this litigation for the recovery of that plantation?
A. No, sir; I have no other suit except this one in the hands of Mr. Mott.

911 Q. I understand you, then, that it is your belief that Aroni never instituted any suit for you?
A. Yes, sir; that is my belief.
Q. During this time that the matter was in the hands of Lobat and Aroni, did you have any letters from them?
A. No, sir.
Q. Did you write any letters to them?
A. No, sir.
Q. Did you ever accept the successions of your father unconditionally, in so far as that portion of it is situated in Louisiana?

A. I don't know exactly, Mr. Beckwith, what you mean by unconditionally.

Q. Did you ever agree to pay all of your father's debts and take the property set over to you in his will?

A. No, sir; my father bought that property for me. Mr. Beckwith, I don't understand exactly how you mean. I don't understand the question.

Counsel for complainant objects to the question as irrelevent.

By Mr. BECKWITH:

Q. Did you ever go into any court in Louisiana or into any probate court in the parish of Carroll, now East Carroll parish, and file a written declaration that you accepted the bequest made to you by your father unconditionally?

A. No, sir.

912 *Admission.*

It is admitted by council for complainant that complainant never accepted the succession of her deceased father unconditionally.

By Mr. KELLY:

Q. Mrs. Boyd, did you happen to know or not at the time you spoke to Lobat and Aroni about your case that Wm. G. Wyly, the deft in this case, was or was not one of the judges of the supreme court of Louisiana?

A. I did not know anything about it, sir.

(Signed) MARY E. R. BOYD.

Circuit Court of the United States for the Western District of Louisiana.

MARY E. BOYD, &c., *vs.* WM. G. WYLY *et als.* } No. 1.

Wm. G. Wyly, being duly sworn, deposed and saith that he is one of the defendants in this cause—the owner of the property described in the bill; that the replication in this cause to the answer of this deft was filed on the 29th of Sept., 1882; that on the 30th day of November, 1882, the complainent applied to this court for the appointment of an examiner, and that shortly after that time the records in this cause was taken to New Orleans at the instance
913 of the complainant and has remained there up to this time; that he has had no notice that the complainant has concluded her evidence; and, further, that in order to obtain the evidence which deponent deems proper for rebuttal, it is necessary that there be an enlargement of the time for taking proofs, and that all of said depositions and proofs can be taken between this date and the 15th of March, 1883.

(Signed) W. G. WYLY.

Sworn to and subscribed before me this the 13th day of Feb'y, 1883.

(Signed) J. B. BEATTIE, *D'y Clerk.*

Order.

Let the time for taking proofs & depositions in this cause be extended until the 15th day of March, A. D. 1883.

Dated Febr. 13th, 1883.

(Signed) ALECK BOARMAN,
U. S. Judge.

Order.

Let a further extention of time to take evidence be had until April 30th, 1883.

(Signed) DON A. PARDEE, *Cir. Judge.*

Filed Feb'y 13th, 1883.

J. B. BEATTIE, *D'y Clerk.*

914 *Notice of Taking Testimony.*

U. S. C. C., 5th Circuit, Western Dist. of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

To Messrs. Mott & Kelly, solicitors for complainant, N. O., La.

GENTLEMEN: Please take notice that by virtue of an order extending the time for taking testimony in the above-entitled cause made by the court herein that W. G. Wyly, one of the defendants herein, a witness in his own behalf, as well as Julius Aroni, Esq., a witness on behalf of respondents, and such other witnesses as may appear on behalf of either party, will be examined before the undersigned, special examiner, in this cause, at the office of Jas. R. Beckwith, Esq., No. 9 Carondelet St., N. O., La., on Monday, Febr. 26th, 1883, at 6 o'clock p. m.

N. O., Febr. 14th, 1883.

(Signed) J. B. BEATTIE,
Special Examiner.

915 *Notice of Taking Testimony.*

Served a copy of the within notice on Messrs. Mott & Kelly, solicitors for complainant, at their office, No. 13 Commercial alley, N. O., La., by handing the same in person to Mr. H'y B. Kelly this 14th day of Feb'ry, 1883.

(Signed) J. B. BEATTIE,
Special Examiner.

Second Day.

N. O., *Feb'ry 26th*, 1883.

Present: J. B. Beattie, special examiner; H'y B. Kelly, Esq., solicitor for complainant; Jas. R. Beckwith, Esq., solicitor for defendant.

W. G. WYLY sworn and examined in his own behalf.

Direct examination by Mr. BECKWITH:

Q. You are one of the defendants in this cause?

A. Yes, sir; I am one of the defendants.

Q. How long have you resided in the parish of Carroll?

A. Since 1848.

Q. Do you remember about what time the parish was divided into East and West Carroll?

A. It was divided in 1877.

916 Q. In which portion of the parish, as divided, have you resided?

A. In the parish of East Carroll, Lake Providence.

Q. You have been, then, familiar with that parish and the property in that parish since your residence there?

A. I have known the parish and the property in the parish well since 1848.

Q. Were you residing in what is now the parish of East Carroll in 1860 and 1861, at the time of the breaking out of the late rebellion?

A. I was.

Q. Did you then know the plantation named in the bill here as the "Raleigh" plantation?

A. I did.

Q. Did you know of the death of the owner, James Railey—at or about what time it occurred?

A. I don't know the exact date of his death, but I think it occurred in 1860.

Q. Where were you in June and July, 1868?

A. I was in the city of New Orleans.

Q. Do you remember what time during that period you remained in the city of New Orleans?

A. I came to New Orleans about the last of May and remained here until late in September.

Q. During that period you did not return to the parish of *of* Carroll or East Carroll?

A. I did not return to the parish of East Carroll.

Q. Did you, prior to your return to the parish of East Carroll in 1868 from New Orleans, have anything to do with or know anything of the succession proceedings in the case of the successions of James Railey?

917 A. I had no personal knowledge of the proceedings in the succession of James Railey; I neither represented the heirs or creditors; I never had occasion to examine the mortuary papers;

I never knew James Railey personally; I never knew his daughter, the plaintiff in this suit; I never knew until a few years ago Fred. W. Boyd, husband of the plaintiff in this suit; I was a total stranger to all the mortuary proceedings.

Q. When did you first know that "Raleigh" plantation was up for sale under proceedings in that succession?

A. I only knew that the place was for sale from the public advertisements that I saw in the papers.

Q. How long was that prior to the public sale of the place?

A. Well, only a few days; I was buying lands about that time; I was investing my money in lands, and in looking over the papers I discovered the advertisement of the sale of Raleigh plantation.

Q. That was advertised for sale at Floyd, was it?

A. Yes, sir; it was advertised for sale at Floyd, the parish site of Carroll parish.

Q. Had you seen or did you examine the papers or mortuary proceedings in the successions of James Railey under which the Raleigh plantation was advertised for sale?

918 A. I never examined the mortuary papers and knew nothing about the condition of the succession; I simply knew from what I saw in the papers that the property was for sale.

Q. Did you make any examination of the papers or proceedings in that succession with a view to ascertain what had been done or with what regularity the proceedings had been conducted until after you became the purchaser of "Raleigh" plantation?

A. I never made any examination of the mortuary papers of the succession of James Railey until after this suit was filed; I had no idea when I saw the advertisement that I would become the purchaser; I was up there buying lands, but I did not know what arrangement had been made or who would be the purchaser.

Q. Did you know who was acting as the representative of that succession either as executor or administrator?

A. Chas. R. Egelly.

Q. Do you know him?

A. I knew Mr. Egelly very slightly, having only seen him twice in perhaps twelve months prior to that time.

Q. Do you know any attorneys, who were at that time or who reside now in the parish of East Carroll, styled in the bill Sparrow and Montgomery?

919 A. Yes, sir; I have known Sparrow and Montgomery well for over twenty (20) years.

Q. Now, did you, prior to your purchase of the Raleigh plantation in Floyd at the succession sale of James Railey, have any arrangement, combination, or agreement or understanding with either Egelly, Sparrow and Montgomery, or any one relative to the purchase or proposed purchase of the Raleigh plantation?

A. I did not.

Q. Had you prior to the time that this property was advertised for sale entered into any combination, arrangement, or agreement with Sparrow and Montgomery or any person or persons with a

view of provoking proceedings in the successions of Raley to the end of bringing about the sale of this plantation?

A. I did not; I had nothing whatever to do with it; I was a total stranger to all the proceedings.

Q. At the sale at Floyd who bid for you on the property; did you bid individually or did some agent bid for you?

A. I bid myself individu-lly; I bought a great deal of property about that time; during the month of October, 1868, I bought, perhaps, ten thousand (10,000) acres of land.

Q. You were at that time investing in land?

A. I had money, and I was buying lands whenever I could find what I thought was an advantageous purchase.

920 Q. Do you know or did you at the time know of any fact or matter or thing about or concerning the public sale of the "Raleigh" plantation at Floyd that was irregular, or did you know anything of any combination to reduce or effect the price of that sale?

A. I did not; I knew nothing in regard to it; I did not know until the property was knocked down to me that I would become the purchaser.

Q. Do you remember about how long after the property was adjudicated to you that you paid the money?

A. Very soon afterwards; a few hours; I think the same day.

Q. Do you remember to whom you paid the money?

A. Well, my impression is that I paid it to Montgomery in the presence of Egelly; I know I paid it under Egelly's instructions; he told me to give it to Montgomery, as he was a privelleged creditor for a large amount; the payment, I think, was made in the presence of Egelly at his request.

Q. Do you know of anything or did you have anything to do with the subsequent dispositions of that money in the succession of Railey?

A. I know nothing in the world about it; soon after the sale I came to New Orleans to reside here; I know nothing of what transpired in that succession; as before stated, I never examined the papers in that succession until this suit was brought.

921 Q. Now, did you at any time either suggest, intimate, or direct what disposition should be made of the money paid by you for the Raleigh plantation among the creditors of the succession of Railey?

A. I know nothing whatever about it and made no suggestions; I was simply concerned about the purchase and about the price to be paid and who to pay it to; that was all the concern I had with the matter.

Q. What condition was the Raleigh plantation in at the time it was purchased by you at Floyd?

A. The Raleigh plantation at that time was exposed to overflow like a great many other places; the levee was down in front and caving off; it was overflowed in 1867 and in 1868; it had the appearance of an abandoned plantation; the improvements were destroyed;

the cabins that were upon the place were poor log cabins; the cabins that are upon the place were put there after I purchased it.

Q. Was there anything of any considerable value upon the place, except the land itself?

A. The land was the only thing I attached much importance to as having any value. As before stated, the cabins were poor log cabins. After buying the property I went to work as soon as I ascertained the levees would be put up on the place and expended a large amount of money in building cabins and opening ditches
922 and clearing up the land, that had grown up, on the place within, perhaps, two years. After my purchase my expenditures in the way of improvements were not less than $25,000.

Q. Could the place have been productive in growing cotton or other crops to any remunerative extent without the repairs and improvements and expenditure you put upon it?

A. As before remarked, the cabins upon the place were old and delapidated and levied out; there was no place for the hands to occupy; these improvements were absolutely necessary to put the place in cultivation; the labor had all gone off from the place, with the exception of a few famil-es; I built afterwards fifty frame cabins with glass windows and brick chimneys and sent and got two hundred negroes to occupy them; I also opened up all the ditches.

Q. You spoke of plantations on the river front caving in the river. To what extent has that plantation caved off since you purchased it?

A. There was originally about 1,600 acres in "Raleigh" plantation; there is now about 900 acres; the balance has caved in the river and the caving is yet going on at a fearful rate.

Q. Now, of the lands that remained and that which caved off into the river, which was the most valuable?

A. In my opinion, the highest and best part of the lands have caved into the river or is outside of the levee. It was once a
923 magnificent plantation, but the caving of the banks and the expenses attending the constant removal of the houses has rendered the place of very little value to me, I think, to-day. I have lost money by having the place. Three lines of levees have been built upon the place since I bought it. I have dug ditches and have to dig them over again, as new levees were built.

Q. You said that about this time, in the summer and fall of 1868, you were purchasing large quantities of land in the parish of Carroll or in the vicinity of the Raleigh plantation?

A. Yes, sir; I was purchasing land in the parish of Carroll, and I bought some land in the parish of Madison, but mainly in the parish of Carroll, as it was one of the most productive cotton parishes in the State.

Q. You were, then, conversant with the prices at public sale of lands of the character of Raleigh plantation and plantations in its vicinity when you purchased this Raleigh plantation in 1868?

A. Yes, sir.

Q. Now, was the price paid by you for the Raleigh plantation a reasonable market value of that plantation at that time?

A. The property that was being sold under the hammer at that time was all sold very low. I thought I could make something by the improved condition of things in the future, and therefore bought lands, generally at forced sales. At a forced sale the Raleigh
924 plantation sold for about the usual price that was paid for such lands at that time; I mean lands exposed to overflow and when they had been abandoned.

Q. Have you with you now, or can you produce, conveyances or copies of conveyances of lands in the parish of Carroll, of the character and description of the Raleigh plantation in quality, made at or about that time?

A. I bought the Raleigh plantation, I think, on the 20th of Oct., 1868. The Bass plantation, upon which I reside, I bought, I think, on the 17th of October, 1868. The Bass plantation I regard as much more valuable than the Raleigh plantation; it has a residence on it that cost $15,000; that was the original price. I bought the plantation in 1868 for $2,000.

Q. Have you the conveyance?

A. No, sir; not with me.

Q. About how many acres was there?

A. 1,400.

Q. Was it equally well situated as the Raleigh plantation?

A. Yes, sir; it produced 500 bales of cotton this year. It is more favorably situated with regard to overflows. Now I have deed of 23rd of October, 1868. I purchased from Dan'l S. Vincent 3,775 acres for $5,000, about a dollar and seventy-five cents an acre.

Q. Where is that plantation situated?

A. That plantation is situated in the parish of Carroll; it was a plantation before the war worth from sixty to seventy-five dollars an acre. I purchased this land on the 23rd of October, 1868.

Q. Is this a copy of conveyance (handing witness a deed)?
925 A. This is a copy of the conveyance.

(Document marked No. 1 offered in evidence.)

I bought the Hawes-Harris place, on the Mississippi river, on the 2 Nov'b., 1867, 3,400 acres, for $650.00.

Q. Have you a copy of the conveyance?

A. Yes, sir; this is it (producing the copy).

(Document marked "No. 2" offered in evidence.)

The WITNESS: It was one of the finest plantations in the parish, but, like the Raleigh plantation, the levee was down on the front, and when I bought the Bass place the levee was down on that place; so that all these plantations on the river, when the levees were down and when the labor had left, when they were offered for sale the price was almost insignificant. The W. W. Richardson place I bought on the 29th of Oct., 1868, 572 acres—price, $400.00.

(Document marked No. 3 offered in evidence.)

Q. Is that situated on the river also?

A. It is situated in the parish, but not on the river; it is exempt from overflow.

On the 10th of Oct., 1868, I purchased the Long-Shot plantation, 569 acres, for $1,000. That plantation before the war was worth $75 an acre.

Q. Was that cultivated land, any of it?

A. Nearly all cultivated land.

(Document marked "No. 4" offered in evidence.)

The WITNESS: The Holland tract, 160 acres; I bought that tract on the 30th of October, 1868, for $160. That land was worth
926 $40 an acre before the war, all in cultivation.

(Document marked No. 5 offered in evidence.)

The Tempelton place, 1,565 acres; the price paid for that place was $1,000; that land was worth $75.00 an acre before the war; that plantation used to produce 1,200 bales of cotton before the war.

(Document marked No. "6" offered in evidence.)

Here is the Chambliss place, 325 acres; John Williams & Son and myself purchased that plantation, April 24th, 1868, for $325.00. There is the deed. That property was worth $75.00 an acre before the war; highly improved land.

(Document marked No. "7" offered in evidence.)

The WITNESS: Here is the Taylor tract; I purchased it on the 9th of Oct., 1869, 650 acres, for the price of $325.00. That place sold in 1860 or 1861 for $40.00 an acre. This was one of the finest places in the parish before the war; highly improved.

(Document No. "8" offered in evidence.)

The WITNESS: Here is the Smith tract; on the 2nd of Jan'y, 1869, I purchased the Smith tract, 425 acres, for the price of $354.75. It was a highly-improved plantation, worth $50.00 an acre before the war.

(Document marked No. "9" offered in evidence.)

On the 5th of Febr., 1870, I purchased the Thompkins plantation, 520 acres, for the price of $1,733.33. This plantation sold before the war for $45.00 an acre; it was one of the best in the parish.

(Document No. "10" offered in evidence.)

927 The Jackson tract, which I purchased on Jan'y 7th, 1869, 417 acres, for the total price of $550.00. This plantation was highly improved—one of the best plantations in the parish.

(Document marked No. "11" offered in evidence.)

On the 28th of October, 1868, I purchased the Farmer tract, 642 acres, for $600. This plantation escaped overflow and is a fine place.

(Document marked No. 12 offered in evidence.)

The WITNESS: I have deeds of other lands that were sold to other people about the same time. I have a deed here from George A. Sheridan, sheriff, to J. W. Montgomery—the C. B. Richardson tract. The deed is dated 3rd of Oct., 1868, for 569 acres; price, $100. That plantation before the war was worth $50 an acre.

Q. Sheriff sale?

A. Sheriff sale; I was present at the sale; it was knocked down for $100.

(Document marked No. "13" offered in evidence.)

Here is a deed from a George A. Sheridan to C. T. Motley. The deed is dated 2nd Jan'y, 1868, 1,200 acres of land; price, $600. I was up there at the sale.

Q. Were you present at this sale?

A. Yes, sir.

Q. Sheriff's sale?

A. Yes, sir.

Q. Do you know anything about that land?

928 A. That land was one of the finest places in the parish before the war; that land was worth $50.00 an acre before the war.

(Document marked No. "14" offered in evidence.)

The WITNESS: Here is a deed from George A. Sheridan, sheriff, to John H. Green. It is called the Foster place, adjoining Raleigh, immediately below. It was sold on the 5th Sept., 1868; 1,700 acres; price, $1,734.00. I was present at that sale.

Q. How did the place compare with the Raleigh place at that time?

A. The Foster place—called Pecan Grove place—had not been overflowed for 50 years. It was occupied during the war and escaped overflow in 1867 and 1868, when Raleigh was inundated. It was cultivated and in a much finer condition than the Raleigh plantation. That place sold in 1868 for some $1,700 and odd dollars at sheriff sales.

(Document marked "15" offered in evidence.)

Here is a deed from W. W. Collins, sheriff, to Chas. McAlister. The sale took place on the 4th Jan'y, 1868; 410 acres; price, $410. I was present at that sale. That property before the war was worth not less than $50.00 an acre.

Q. Was it in as good a condition as the Raleigh plantation when you bought it?

A. It was in as good a condition—exposed to everflow—as the Raleigh plantation.

(Document No. "16" offered in evidence.)

Now here is a deed from George A. Sheridan, sheriff, to
929 Louis F. Genesis—the Carey place. It was sold on the 5th Sept., 1868; 647 acres; price, $215.67.

Q. What is the character of that place?

A. Just as good land as any place in the parish; highly improved before the war; exposed to overflow. All these places exposed to overflow were adjudicated for whatever peopel would give for them.

(Document marked No. "17" offered in evidence.)

Here is a place that was not exposed to overflow. The deed is from W. W. Collins, sheriff, to H'y Friellson. The Geo. G. Wilson place was not exposed to overflow; situated on Lake Providence, one mile and a half from the town of Lake Providence. I was at the sale of that plantation on the 4th of April, 1868; 532 acres sold for $3,000; H'y Fielson became the purchaser. That plantation was worth $75.00 an acre before the war and was protected from overflow.

(Document marked No. "18" offered in evidence.)

Here is a deed from W. W. Collins, sheriff, to H'y Frelson. The sale was made April 4th, 1868. I was present at the sale. 500 acres of land sold for $688.34. There was the Claney place; that plantation before the war was worth not less than $75.00 an acre. It was exposed to overflow when the sale occurred.

(Document marked No. "19" offered in evidence.)

Here is a deed from W. W. Collins, sheriff, to T. M. & J. M.
930 Allen & Co.; the Owen tract, sold April 4th, 1868. I was at that sale; 480 acres; price, $160. That property was worth before the war $50.00 an acre. It was exposed to overflow when the sale took place.

(Document marked No. "20" offered in evidence.)

Here is a deed from W. W. Collins, sheriff, to T. M. & J. M. Allen & Co.; the Waddill tract. It was sold April 4th, 1868; 160 acres; price, $107.68. The property was worth $40.00 an acre before the war. It was exposed to overflow when this sale occurred.

(Document marked No. "21" offered in evidence.)

Here is a deed from W. W. Collins, sheriff, to Enoch Farmer. The sale took place Jan'y 4th, 1868. I was present at the sale. 642 acres sold for $481.50.

(Document marked No. "22" offered in evidence.)

Q. What was the character of that land?

A. That land was protected from overflow. That land was worth from $25.00 to $30.00 an acre before the war.

(Document marked No. "23" offered in evidence.)

Here is a deed from W. W. Collins, sheriff, to H. R. Scott, tutor; 1,520 acres and eight mules. It was sold Jan'y 4th, 1868, and the price was $1,760.00. I was present at the sale of that property. It was worth before the war $25.00 an acre.

Q. During the time covered by the conveyances you have produced you were in the market for the purchase of lands of the character sold, where you not?

931 A. Yes, sir; I was buying lands; I have bought as much as 20,000 acres.

Q. Your attention was then called particularly to the price brought by lands when exposed at public sale?

A. I was a practicing attorney then, living at the parish site, Floyd, representing a great many clients, and was observing, of course, the sale of lands, and where my clients had no interest in the sale, where I was free to buy without compromising my clients, I was looking out for eligible investments; I purchased within a few years about 20,000 acres of land in all.

Q. Now, can you state whether these pieces of property in the various deeds you have produced were the ruling prices that prevailed at the time for that c-ass of land?

A. Yes, sir; for lands situated as they were—that is, lands exposed to overflow.

Q. Is it not true at that time the problem of labor or whether these plantations could be carried on in the future with success — very uncertain?

A. I differed with a good many of our best citizens about the future. I thought as great wealth had been accumulated in earlier times by investments in these lands *I thought* money could be made by makeing judicious investments at the time. There were many things that caused depreciation of prices in land. The first was the overflow. The country had been overflowed in many parts of the parish quite often, and up to 1838 we had no satisfactory
932 system of levees or levee system, and the frequent overflows had discouraged the people very much. The citizens of that parish had sustained great losses in planting; they were very much impoverished; the parish was very poor. There were no land buyers from other communities in the market for the lands that were being forced upon the market at that time. A great many mortgages were held by commission merchants and banks, and the parties who held them had very little desire to purchase lands exposed as they were to overflow. Hence those places that were forma-lly very valuable were forced upon the market in 1867, '8, & '9, and, as the people were very poor, the price of lands ruled at a very low rate for want of bidders at the forced sales. There was another reason that depressed the price of lands in 1868; it was the unsettled political condition of the country. A great many of our citizens, when the constitutional convention assembled in 1868 in New Orleans, thought the country would be Africanized; they had no confidence in the Government that recognized the negro as a voter; a number of citizens had gone to Honduras.

Q. Citizens of Carroll?

A. Citizens of Carroll had gone to Honduras and other places to escape an era of misrule, high taxation, and destruction that they thought would fall upon the country by the administration of the Republican party. The common sentiment of the people —
933 that the country would be Africanized; lands were not worth anything; I did not agree with that sentiment; I believed that in the course of time things would get better; therefore I

thought I would invest my money in these lands, believing that in the course of 8 or 10 years the disturbed condition of affairs would become better, and that the price of property would be inhanced in value. So it was the financial and political condition of the country, as well as the overflows, that combined to knock down the price of property to almost a nominal figure.

Q. You have read and are familiar with the bill of complainant in this case?

A. I have.

Q. Now, is there any word of truth in the charges of fraud made against you in that bill on the charge of conspiracy and fraudulent combination between you and any of the parties named in the bill?

A. No; there is not; I bought the land as I bought all the other land; I bought it as a speculation and an investment.

Q. You never was a party to or instituted any step or proceeding, as the- allege, to force the sale of the Raleigh plantation?

A. I was not; I had no hand in or knowledge of any proceedings that culminated in the sale of the property except the
934 advertisement which I noticed in the papers.

Q. Now, were you the owner or holder of any claims or demands against the succession of Jas. Railey?

A. I own claim- against the succession amounting to $40,000.00, interest and all.

Q. How long have you held that?

A. I have held that since 1870.

Q. What are the character of the claims?

A. I hold a mortgage upon the plantation.

Q. Against Raleigh plantation?

A. Yes, sir; against Raleigh plantation; I hold a mortgage on the Raleigh plantation; I have a mortgage title as well as a fee-simple title.

Q. That is, that mortgage exist- if you have no title?

A. That mortgage existed when I bought the property.

Q. Now, has there been any payment or tender of any payment to you on any of these demands against the Railey succession?

A. None, whatever; I don't think I ever saw Mrs. Boyd in my life.

Q. My question is, whether from any source?

A. There was no tender or payment of the claim I hold or tender of the price I paid.

Q. At the Floyd sale?

A. At the Floyd sale.

935 No cross-examination.

Counsel for defendants offered in evidence copy of the record of the Court of Claims of the U. S. in the case of F. M. Boyd, ex., *vs.* The United States.

(Document marked No. "24;" also document marked No. "25.")

Counsel for complainant objects on the sole grounds that the documents are not *ir*relevant to any of the issues raised in the proceedings.

Third Day.

NEW ORLEANS, *Febr'y 27th*, 1883.

Present: J. B. Beattie, special examiner; Jas. R. Beckwith, Esq., counsel for def't, and Julius Aroni, Esq., a witness for def't.

JULIUS ARONI, Esq., sworn and examined on behalf of defendant.

Direct examination by Mr. BECKWITH:

Q. Mr. Aroni, you are a practicing lawyer in the city of New Orleans?

A. I am, sir.

936 Q. How long have you been so?

A. Well, some 29 or 30 years; not all the time in New Orleans.

Q. Where you ever at any time a member of the firm of Labat & Aroni, attorneys in the city of New Orleans?

A. I was.

Q. Did you or your firm have any negotiations or enter into any arrangement with Mrs. F. W. Boyd in relation to any proposed action at law in equity against Judge Wyly concerning or about a plantation situated in the parish of Carroll called the "Raleigh" plantation?

A. I was written to by Mrs. F. W. Boyd whilst I was a member of the firm of Lobat & Aroni in reference to her claim against Judge W. G. Wyly, which she desired to enforce for the purpose of recovering a plantation in Carroll parish belonging to her father, Col. Railey. I don't remember the name of the plantation.

Q. Do you remember whether she rested her claim of title upon a will?

A. I do not.

Q. Did you ever have any other conference, by letter or otherwise, concerning any other demands against Judge Wyly?

A. No, sir.

Q. Can you fix the date on which she first wrote to you concerning this demand against Judge Wyly?

A. The correspondence, I believe, must have commenced either late in 1871 or early in the year of 1872.

937 Q. Did it result in any agreement or contract, conditional or otherwise, between you or your firm and Mrs. Boyd?

A. There were some negotiations about fees, and the contract for fees was sent to me by Mrs. Boyd, who, I believe, lived in Chicago or somewhere Northwest, I believe. The terms would have been acceptable, but after careful investigation of the whole matter I came to the conclusion that I would not succeed in bringing about the desired result if I were to institute suit.

Q. Do you remember whether that contract was ever executed or signed by you or your firm and agreed to?

A. When I found out, or rather when I had concluded, that I could not succeed in her suit I returned the contract to her, enclos-

ing the same in a letter which I wrote to her on the 8th of June, 1872.

Q. Have you a copy of that letter?

A. I have my letter book before me and therein find a letter written by myself to Mrs. Boyd, wherein I stated my reasons for declining to institute the suit, and for the same reasons I returned the written contract as sent to me by her, as already stated, and I now proceede to read the letter just referred to.

NOTE.—The witness read the following letter:

938 JUNE 8TH, 1872.

Mrs. F. W. Boyd.

DEAR MADAM: After careful examination of the affairs connected with the estate of your deceased father we have come to the conclusion that it will be utterly useless to commence proceedings against Judge Wyly.

The following are principal reasons: We find that a number of judgements, and for large amounts, have been obtained against the estate, which are still in existance and of full validity, so that even if we were to succeede in setting aside the sale our labors would not enure to your benefit, but to that of your father's creditors who could at once have the property resold for the payment of their claims, many of which have been legally transferred to Judge Wyly; another reason is we would be required to refund to Judge Wyly the price for which the property was adjudicated to him. We regret, therefore, that we are compelled to decline instituting the contemplated suit and return to you the contract for fee.

Very respectfully yours, &c.,

JULIUS ARONI,
For Hunton & Grover, Labat & Aroni.

The WITNESS: I may add that as the questions submitted to me were of grave importance and of considerable magnitude, I had associated Col. Hunton with me in the investigation, and it was,
939 after a full exchange of our views, Labatt and Aroni presented by me, and Col. Hunton, representing Hunton & Grover, that we concluded to abandon the idea of instituting suit against Judge Wyly.

Q. Col. Hunton was a practicing lawyer in the city?

A. At that time Col. Hunton was a prominent lawyer in the city of New Orleans, with a large practice in the equity court of the United States, where this suit was to be brought.

Q. Do you remember whether that letter was mailed to her or not (refer-ing to letter read by witness.)?

A. I am very certain the letter was mailed. I have got good reasons why I know it. I am also certain it was received by Mrs. Boyd, because the contract which I returned to her was shown to me by her counsel here in New Orleans.

Q. Subsequently? How long subsequently?

A. A few months ago.

Q. Did you ever get a reply to this letter from her?
A. No, sir. There was no occasion for it.
Q. Now, was there ever any negotiations, subsequent to the negotiation terminated by the letter you have above given, between you or the firm of Lobat & Aroni and Mrs. Boyd in relation to this matter?
A. None whatever, as far as I know.

940 *Fourth Day.*

NEW ORLEANS, *March 30th*, 1883.

Notice of taking testimony waived by council for def't.

Present: J. B. Beattie, special examiner; H'y B. Kelley, Esq., solicitor for complainant; Jas. R. Beckwith, Esq., solicitor for def't.

E. J. STILES sworn and examined on behalf of complainant.

Direct examination by Mr. KELLEY:

Q. Mr. Stiles, state your name, age, and occupation.
A. Edward J. Stiles.
Q. Live in the city?
A. I am a resident of New Orleans; travelling agent for Graham, Black & Co., cotton factors.
Q. Have you any knowledge of Carroll parish?
A. Yes, sir.
Q. Know the topography and situation of the lands in that parish?
A. I have travelled a great deal through there, sir, in the parish; I know the front lands of the parish, sir.
Q. Do you know where Joe's bayou is?
A. Yes, sir.
Q. Where is it?
941 A. It is partly in the parish of Madison, between the Mississippi and the Mason.
Q. About what part of the parish is it in?
A. I suppose from six (6) to twelve (12) miles from the river.
Q. Its general direction is from north to south?
A. Yes, sir; it runs parallel with the river.
Q. Do you know where the Ashton levee is?
A. Very well—that is, I know where the Ashton br-ake is.
Q. Where is that?
A. Just at the Arkansas and Louisiana line.
Q. Upper edge of the parish—Carroll parish?
A. Yes, sir.
Q. What is the character of the br-ake there?
A. It is a very wide one; it is one that in years past has inundated a large portion of this State.
Q. How long has that br-ake been there?
A. To my knowledge, it has been there since 1876; I don't know how much longer.
Q. What portions of the country do the waters of that br-ake overflow?

A. Well, sir, it overflows the rear portion of the parish of East Carroll and the front portions of West Carroll, and a portion of Moorehouse parish.

Q. I am inquiring particularly about the parish of East Carroll?

942 A. It overflows the back portion of East Carroll parish and the front of West Carroll parish; it covers the country along the banks of Joe's bayou; it depends, however, upon the depth of water; the country in that neighborhood has been abandoned in consequence.

Q. What is the elevation of the land in that part of the parish as compared with the lands on the river front?

A. They are very much higher on the Mississippi river front.

Q. What would be the relative value of the lands on the river front as compared with those in the back part of the parish along Joe's bayou?

A. The river lands are very much more valuable than the back land.

Q. Any hill land in that parish?

A. No, sir; not in East Carroll; there may be, but I don't know of any hill land around there, unless at the Mississippi river at the Ashton br-ake; I don't know of any hill land in East Carroll parish.

Q. From your knowledge of the country up there, would you or would you not consider the price of realty lands in the neighborhood of Joe's bayou any criterion or stan-ard for the value of land on the front along the Mississippi river?

A. It would not be any criterion.

Q. Do you know the "Raleigh" plantation up there—Judge Wyly's place?

943 A. I have seen it; I have not passed through it; I know it in a general way; I have never examined it critically.

Q. How does it compare with the average plantations up there, as far as you know?

A. It compares very favorably—that is, up to the time the levee broke there last year and inundated it. As to the improvements and character of the soil it compares very favorably.

Q. The inundation last year was very general, wasn't it?

A. In the immediate locality of "Raleigh" plantation it was. None of the front lands in East Carroll parish above "Wilton" were inundated; all below were.

Q. In that vacinity?

A. Yes, sir.

Fifth Day.

APRIL 3RD, 1883.

Notice of taking testimony waived by council for def't.

Examination of Mr. STILES resumed.

By Mr. KELLEY:

Q. Do you know the value of hill lands up in that region of country?

A. What region of country?
Q. Well, about East Carroll.
A. There are no hill lands in East Carroll.
Q. Are there any hill lands in West Carroll?
A. Yes, sir.
Q. What would be the value of such lands?
944 A. I suppose very much would depend upon the character of the improvements. There is no market value at all for wild lands in East Carroll parish. In West Carroll parish cultivated hill lands are worth something. Graham, Black & Co. own four hundred & ninety, 490, acres of wild land which they have offered repeatedly for five hundred dollars ($500.00).
Q. What would be the relative proportion of the value between cultivated hill lands and cultivated bottom lands—take, for instance, the "Raleigh" plantation?
A. Well, I suppose "Raleigh" plantation would be worth from three (3) to four (4) times as much per acre as any cultivated land among the hills of West Carroll.

Cross-examination by Mr. BECKWITH:

Q. Did you ever reside in East or West Carroll?
A. No, sir.
Q. How did you acquire your knowledge of that country?
A. From traveling.
Q. For what purpose did you travel?
A. I have been traveling agent for the cotton house of Graham, Black & Co.
Q. In soliciting consignments?
A. Yes, sir; principally in making collections in that country where they had out a large amount of money.
Q. When did you first go up to Carroll parish, or get any knowledge of it?
945 A. In 1876.
Q. Your knowledge consisted—such knowledge as you acquired—of such information as you gathered in making your collections?
A. In takeing mortgages and making purchases. We purchased a good deal of real estate.
Q. On speculation?
A. No, sir; we purchased it because we had to foreclose; we took it in making amicable settlement; we took the land for debt.
Q. During what year?
A. We purchased in 1878; we purchased, I think, in 1880 and 1881.
Q. Your earliest purchases, then, were in 1878?
A. Yes, sir.
Q. Were those purchases made at forced sales, or in compensation for debt?
A. Generally in compensation for debt.
Q. Well, the exchange, then, was a matter of compromise, wasn't it?

A. Generally it was a matter of settlement. It was a question of taking land in lieu of money. We made one (1) purchase where the party owed us forty thousand dollars ($40,000); we paid them ten thousand dollars ($10,000)—that is, we took land.

Q. You have never been in the market buying land on speculation or in any other way, except for debt?

A. We never bought or sold on speculation.

Q. You referred, in your examination-in-chief, to Joe's bayou. Where does that run through—what portion of *of* East Carroll parish?

946 A. It runs parallel with the Mississippi river, and I would suppose from six (6) to twelve (12) miles from it.

Q. Empt*y*s into the river?

A. No, sir; it does not.

Q. Where does it discharge?

A. Its mouth is somewhere below, in Madison parish; I think it discharges into the Tensas river.

Q. What portion of the banks of that bayou h ave you been over?

A. I have been along it in East Carroll.

Q. For the whole width of East Carroll?

A. No, sir.

Q. What portion of it?

A. I have crossed it at several points. I suppose I have crossed it at three (3) or four (4) different points.

Q. Your knowledge, then, of the lands along the bayou is such as you got in crossing it?

A. My knowledge is derived from riding in a dug-out.

Q. Well, how much of that bayou have you been over in a dug-out?

A. From Lake Providence to Goodriche's and Wilton's.

Q. Were your voyages up and down the bayou or across it?

A. They were across the bayou.

Q. You knew nothing of the parish, I suppose, prior to 1876?

A. No, sir.

By Mr. KELLY:

Q. What depth of water was there in the bayou when you crossed it; was there a few inches, or was the water deep?

947 A. There was no uniformity of depth.

Q. Well, during periods of high water?

A. There is no uniformity of depth. I have crossed the bayou sometimes when I had to get out and carry the dug-out across.

Q. During high water there is a general inundation along Joe's bayou?

A. Yes, sir; there is a general inundation along Joe's bayou in the spring of the year.

By Mr. BECKWITH:

Q. Do you know how long that inundation lasts or how frequent it is?

A. It has been generally every spring.

Q. You don't know how long it lasts, do you?

A. When the Mississippi river gets within its banks the water generally goes off.

Q. Have you ever seen it inundated in June?

A. Yes, sir; when the water is high.

By Mr. KELLY:

Q. Where does most of the water come from?

A. Last year it came from several sources; some of it came from the Ashton br-ake.

Admission.

It is admitted by counsel for defendant that document marked "X X" is a correct tracing of the parish of Carroll as it appears on Hardee's official map of the State of Louisiana made in the year of 1871, and that said tracing was made by Geo. B. Nicholson, civil engineer.

948 EUGENE D. SAUNDERS sworn and examined on behalf of complainant.

Direct examination by Mr. KELLY:

Q. Mr. Saunders, will you please look at that order and state whether you went up to Lake Providence (handing witness the original order appointing a special examiner in this cause)?

Witness, after looking at document referred to above, says:

A. Yes, sir; I did last summer. I left the city on the 14th of July last, I think, to take testimony in this case at Lake Providence. I was at Lake Providence from the 15th of July until about the 1st of August; most of the time I was engaged in taking testimony in this case.

Q. Look at that notice and say if you attended at Lake Providence on the day specified therein (handing witness document marked "X X X").

NOTE.—Witness, after looking at document marked "X X X," says:

A. Yes, sir; I went up to Lake Providence on the 7th of August in order to be at Lake Providence to take the testimony of Judge Wyly's witnesses on the 10th of August. I went pursuant to that notice (referring to doc. marked "X X X"). I went there to take testimony; when I got there Judge Wyly declined to take testimony; he did not give any reason for declining, but I recollect he refused positively to take testimony. I called on him then to take
949 testimony pursuant to this notice; he denied that he had given any notice. I told him I had that notice signed by his counsel, Judge Ludeling. He said if Judge Ludeling had given any such notice that it was without his authority; he called on me to produce it. I told him that the notice was in my room at the boarding-house where I was staying; that I would show it to him or

file it with the commissioner. Then, as he did not take testimony, I came back on the 10th day of August. There was no further testimony taken at Lake Providence.

Q. Well, state what occurred before—when you first went up there.

A. When I first went up there we took a great deal of testimony for the purpose of establishing the value of lands of simillar character and situation to those of "Raleigh" plantation.

Counsel for def't objects to the witness testifying as to the takeing of depositions, the deppositions themselves being matters of record.

The WITNES-: I took the oral testimony of a number of witnesses, as the record shows. Judge Wyly informed me then that he would offer in evidence deeds of sales of lands in that parish about the time the "Raleigh" plantation was sold for the purpose of showing that the price obtained for "Raleigh" plantation was the average price obtained at that time. He had a good many deeds made out; I don't know how many. I saw him one day with a bundle of them in his pocket; he drew them out, but did not show them to me, and
950 I think on that same day he had offered two (2) or three (3) of them in evidence before the commissioner. When he offered them I inquired of the witnesses who were present what were the circumstances under which those sales took place. The record will show what explanations were given to account for the low prices which *which* were shown by the deeds he offered in evidence. Judge Wyly then stopped offering the deeds in evidence. I simply know from what he said that he at that time had a number of them (deeds) made out. He could have offered them at that time had he been disposed to do so, but he didn't offer more than one (1) or two (2).

Q. Did Judge Wyly, at that time, make any statement to you why he purchased those lands in Carroll parish?

Question objected to by counsel for def't.

A. In conversation with Judge Wyly I heard him say that after the war he had purchased a great deal of lands in the back portion of the parish, as I understood it, which were overflowed and of very little value unless the levees, which protected them, were rebuilt; they would be, he said, of more value than the river lands. I don't recollect precisely the amount of land he said he purchased, but my impression is he said somewhere about twenty thousand (20,000) acres. Some of those lands were on Joes bayou, he told me; just where there are I don't recollect, but they are between Lake Providence and Floyd somewhere.

Q. Did he assign any reason for not taking any testimony for the defence?

The WITNESS: On the 10th of August?

Mr. KELLY: Yes, sir.

951 The WITNESS: I don't think he assigned any; I don't recollect his assigning any; he arbitrarily refused to do it. I then called on him in the presence of the commissioner, Mr. Beattie, to

take the testimony pursuant to the notice that had been sent me by his counsel, Judge Ludeling. He refused to do it. I heard the boat blowing for the landing and told Mr. Beattie, the commissioner, to enter my protest against the proceedings on the part of Judge Wyly in summoning me up there to take testimony and then not take it. I wrote Judge Wyly a letter while I was on the boat to put in the record; what I thought about his summoning me there to take testimony and then not taking it. I sent it to Mr. Beattie and told him to file it in the record. I can say, in regard to those deeds, that if they had been offered last summer we would have had an opportunity *to* ascertaining whether they represented *bona fide* sales or not; also the situation and valuation of the lands conveyed under them.

Q. You had no opportunity at that time to take rebutting testimony?

A. No, sir; the record will show that.

Q. And you came away?

A. I came away on the 10th of August, as soon as he refused to proceed with his testimony.

Cross-examination by Mr. BECKWITH:

Q. At the time these deeds you speak of were produced by Judge Wyly, you were making out your case, were you not?

952 A. Yes, sir; I was taking testimony for complainant.

Q. And it was during the cross-examination of some of the witnesses.

A. Yes, sir.

Q. What was your relations with the case then?

A. I was then a partner in the firm of Mott, Kelly & Saunders, who were solicitors for complainant, and as a member of that firm I was taking testimony.

Q. When was the partnership dissolved?

A. On the 1st of Dec., 1882.

Q. That left you without any interest in this suit?

A. Without any at all, sir.

Q. Now what means have you of knowing what papers Judge Wyly held in his hands during the cross-examination of your witnesses?

A. Merely from what he said to me; he said those were deeds he would offer.

Q. He did not show them to you?

A. No, sir; he did not show them to me.

Q. Consequently you knew nothing more that his general statement in regard to those deeds?

A. That is all; I know that he stated to me that the deeds would be offered for the purpose of showing the value of lands at that time, in 1868, in that parish.

Q. You got rather put out with Judge Wyly, did you not?

A. I did, in consequence of my second visit, on the 10th of August.

Q. You wrote him a pretty sharp letter, didn't you?

A. The letter, which is on record, will show; I must say, I was very much put out with Judge Wyly.

953 Q. That rather appeared in your letter?
A. I think it did.

Notice of Taking Testimony.

Original.

U. S. C. C., 5th Circuit, Western Dis't of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

To Jas. R. Beckwith, solicitor for def't, N. O., La.

DEAR SIR: Please take notice that an examination of witnesses on behalf of complainant will be held at Lake Providence, East Carroll parish, La., on Friday, April 20th, 1883, and continue from day to day until completed

N. O., La., April 14th, 1883.

(Signed) S. B. BEATTIE,
Special Examiner.

Served a copy of the above notice on Jas. R. Beckwith, Esq., solicitor for def't-, by handing *him* the same to him in person in N. O., La., April 14th, 1883.

(Signed) J. B. BEATTIE,
Special Examiner.

954 *Notice of Taking Testimony.*

U. S. C. C., 5th Circuit, Western Dist. of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

To Hon. Wm. G. Wyly, Lake Providence, La.

DEAR SIR: Please take notice that an examination of witnesses on behalf of complainant in the above-entitled and numbered cause will be held at Lake Providence, East Carroll parish, La., on Friday, April 20th, 1883, and continue from day to day until completed.

Lake Providence, La., April 17th, 1883.

(Signed) J. B. BEATTIE,
Special Examiner.

Served a copy of the above notice on Wm. G. Wyly, Chas. R. Egelly, def'ts, and Jas. M. Kennedy, Esq., solicitor for def'ts, by handing them copies of the same in person, at Lake Providence, La., April 17th, 1883.

(Signed) J. B. BEATTIE,
Special Examiner.

955 *Sixth Day.*

LAKE PROVIDENCE, EAST CARROLL PARISH, LA.,
April 21*st*, 1883.

Present: J. B. Beattie, special examiner; H'y B. Kelly, Esq., solicitor for complainant; J. M. Kennedy, Esq., solicitor for defendants.

F. H. G. TAYLOR sworn and examined on behalf of complainant.

Direct examination by Mr. KELLY:

Q. Mr. Taylor, state your age and occupation, sir.
A. Well, sir, I am sixty-one (61) years of age; deputy clerk of the eighth district court.
Q. The clerk is *ex officio* recorder?
A. Yes, sir; I am deputy clerk and *ex officio* deputy recorder.
Q. The assessment rolls of this parish are on deposit in your office, are they not, for the years of 1870 & 1882?
A. Yes, sir.
Q. Will you look at that abstract of the assessment rolls and state whether you prepared that abstract from the rolls, and say whether it is correct and whether you took it from the rolls (handing witness document referred to)?
A. Yes, sir; I prepared that myself; took it from the rolls; it is correct.
956 Q. It is correct?
A. Yes, sir; it is correct; it is from the assessment rolls of 1870 and 1882.

Document marked "26," offered on the part of complainant, filed.

Cross-examination by Judge WYLY:

Q. Do you know the Cunningham place, Mr. Taylor?
A. Yes, sir; I know it pretty well.
Q. Is that on the river or on the bayou?
A. It is on the river.
Q. In cultivation?
A. Yes, sir.
Q. Is it considered a good average place?
A. I consider it one of the best places in the parish myself.
Q. Did it escape overflow last year?
A. Well, now, I was so closely confined in my office last year that I am not prepared to say whether the back part was under or not.
Q. Were the river places in the parish above "Wilton" overflowed last year?
A. No, sir; I think not.
Q. As a whole, do you think that plantation was under water last year?
A. Well, I can't answer that question because I don't know anything about it; I really can't say.
Q. Was that plantation (Cunningham) sold at auction last year or sold by the sheriff?

957 A. Yer, sir; sold at auction.

Q. Will you look at that deed—I see it is certified to by you as deputy recorder—and say if — made that copy?

A. Yes, sir; I drew up that deed myself; it is an exact copy of the deed.

Referring to document marked "27," offered in evidence on the part of def't, filed.

Q. Mr. Taylor, do you know the Edgewood plantation?

The WITNESS: Which—that place down the river?

Judge WYLY: Yes; close by "Raleigh."

The WITNESS: Yes; I know the place, but all I know about it is from seeing it when riding along on the levee; I don't know anything about the character of the place.

Q. You were down in that neighborhood frequently some years ago?

A. Yes, sir; some years ago.

Q. I hold in my hand a deed of that "Edgewood" plantation, made on the 22nd of Sept., 1869, by Perry H. Hanna to Frank M. Taylor. The tract purports to contain three hundred (300) acres, and the price is seventeen hundred & fifty dollars ($1,750). Will you look at that deed and say whether that refers to that place (handing witness deed referred to)?

(Witness, after looking at the deed referred to:)

A. This is the deed that was copied by Mr. Hook this morning; I gave him the original deed to copy from.

(Document marked "28," offered in evidence by def't, filed.)

958 Q. This is a copy of the original deed?

A. Of course.

Q. Well, now, I will ask you, Mr. Taylor, how far is the "Edgewood" plantation above "Raleigh" plantation, on the river?

A. Well, sir, it is about—from the upper edge of "Raleigh" to the lower line of Edgewood it is hardly a mile; about three-quarters (¾) of a mile.

Q. About three-quarters of a mile above "Raleigh" plantation?

A. Yes, sir.

Q. Did you know the "Goodrich" place in 1868?

A. Yes, sir; I know that place pretty well.

Q. What was the condition of that place in 1868 with reference to the other places; was it considered an eligible plantation?

A. Yes, sir.

Q. Was it well improved?

A. Yes, sir; it is a small place; considering the size of it, it was one of the best improved places on the river; the dwelling was a very indifferent one, but it had a good gin-house on it. For a small place it was a little above the average of places.

Q. I will ask you whether or not it had a fine stone house?

A. Yes, sir; the finest stone house in the parish, probably; none in Providence to equal *to* it.

Q. I will ask you if that stone house was (1) one or (2) two-story?

A. (2) Two-story.

Q. Was that built just before the war?

A. Yes, sir; a short time before the war.

959 Q. I will ask you what was the probable expense and cost of that building?

A. I can't say.

Q. What would be the ordinary expense of such a building as that?

A. I have no idea.

Q. I hold in my hand a deed under execution of John W. Scarborough *vs.* Henry Goodrich. This purports to be a sale of that plantation by the sheriff on the 2nd of May, 1868. I will ask you to examine that deed and say whether that came from your office—that copy (handing witness a deed).

A. Yes, sir; that was made this morning by Mr. Hook, deputy in the office. I presume it is a true copy. I did not have time to compare it with the original; I was very busy. I know he had the original to copy from. I know I gave it to him, and I presume it is correct.

Document marked No. 29, offered in evidence on the part of def't, filed.

Q. Mr. Taylor, I hold in my hand a deed by the sheriff to Mary B. Balfour, "Rescue" plantation, sold under execution 1st of February, 1868, eleven hundred and eighty-two (1,182) acres of land, forty-six (46) mules, four (4) horses, two thousand nine hundred and sixty-two (2,962) bushels of corn, and farming implements; sold for the price of eleven thousand seven hundred dollars ($11,700). I will ask you if that was not a cotton plantation, and whereabouts in the parish it is located; how far from "Raleigh" plantation?

A. It was a cotton plantation in 1868.

960 Q. How far is it from the "Raleigh" plantation?

A. Well, it is about—in a direct line I suppose the "Rescue" plantation—well, I don't know exactly. In a direct line I suppose it would be some four (4) miles.

Q. Did you have the copy made out (handing witness deed above mentioned)?

A. Yes, sir; I had this copy made out at your request.

(Document marked No. "30," offered in evidence on the part of def't, filed.

Q. Mr. Taylor, do you know this "Davison" track out here near Capt. Montgomery's place?

A. Yes, sir; I know it by riding along the place.

Q. You knew it before the war?

A. No, sir; I did not.

Q. Did you know when Davidson owned the tract?

A. No, sir; never was in Providence but once before the war. I

know as little about the country up here as any man in the parish, I reckon.

Q. I have the deed of the "Davidson" tract sold on the 5th Dec., 1868, eleven hundred and ninety-one (1,191) acres, price nine hundred and eighty-two dollars and $\frac{80}{100}$ ($982.80). How far is that place from here?

A. About five (5) miles.

Q. Is that a correct copy of the deed (handing witness deed referred to)?

A. Yes, sir; I had this copy made out.

By Mr. KELLY:

Q. On which side of the Tensas bayou is it?

961 A. It is on this side, sir; whether it runs over the bayou I don't know; I think it is on both sides of the bayou, but the improvements are on the other side; the building and gin-house are on the other side; most of the open lands was on the other side; the buildings are all gone.

(Document marked No. "31," offered in evidence on the part of def't, filed.)

Q. Now, Mr. Taylor, do you know the "Drew" tract on Bayou Mason?

A. Yes, sir; I know it very well; the one there above "Monticello?"

Q. Yes, sir.

A. Yes, sir.

Q. There are four hundred and forty-eight (448) acres in that tract?

A. Yes, sir.

Q. Mr. Taylor, I hold in my hand a deed by W. W. Collins, sheriff, to John A. Stevenson, of New Orleans, showing a sale of four hundred and forty-eight (448) acres of land on the 6th of June, 1868, for the price of eight hundred and ninety-seven dollars and $\frac{67}{100}$ ($897.67). I will ask you to look at that deed and say whether it is one of those furnished from your office (handing witness deed referred to)?

A. Yes, sir; that deed was furnished at your request from my office.

(Document marked No. "32," offered in evidence on behalf of def't, filed.)

Q. Mr. Taylor, what was the character of that "Drew" place before the war?

A. I think the Drew place before the war was considered one of the best places in the parish; it was abandoned since the war;

962 that place was abandoned in consequence of overflow; that section of country before the war when the levees was up was a better country than the river country really.

Q. What would you estimate that land as having been worth before the war?

A. Well, sir, I suppose that land before the war was worth sixty dollars ($60.00) an acre.

Q. Mr. Taylor, do you know H. R. Wade?

A. Very well.

Q. Did you know his place in the parish of West Carroll, but formally in the parish of Carroll, back of Floyd?

A. Yes, sir; I know it.

Q. Was that considered a valuable property before *before* the war?

A. Well, it was considered a fair—about the average of places about the Mason hills.

Q. Was it above overflow?

A. Yes, sir; it was above overflow.

Q. Considered a fair average plantation?

A. Yes, sir; for that country.

Q. Mr. Taylor, I hold in my hand a deed from Geo. A. Sheridian, sheriff, to L. J. Land, of date Dec. 5th, 1868, in which is conveyed six hundred (600) acres of land, nine (9) mules, forty (40) head of cattle, fifty (50) head of hogs for the total price of eight hundred dollars ($800). I will ask you whether this deed is from your office and whether you furnished it to me (handing witness deed refer-ed to)?

A. Yes, sir.

963 Q. It is duly recorded in your office?

A. Yes, sir.

Document marked No. "33," offered in evidence on the part of def't, filed.

Q. Mr. Taylor, did you know the De France or Hardiman place before the war?

A. Yes, sir; it was right across the bayou from me.

Q. Was that an improved plantation?

A. Yes, sir.

Q. Was it a valuable plantation?

A. Yes, sir.

Q. What was that place probably worth, say, in 1860 or 1861, per acre?

The WITNESS: Just before the war?

Judge WYLY: Yes, sir.

The WITNESS: Well, I suppose it was worth forty dollars ($40) an acre.

Q. Mr. Taylor, I have a deed of that plantation from W. W. Collins, sheriff, to A. & M. Heine, on the 6th day of June, 1868, seven hundred and fifteen (715) acres, for the *told* price of nine hundred and thirty-three dollars and $\frac{33}{100}$ ($933.33). I will ask you to look at that deed—that copy—and say if you have seen it, and if it was furnished from your office (handing witness deed above referred to)?

A. Yes, sir.

Document marked No. "34," offered in evidence on the part of def't, filed.

964 By Mr. KELLY:

Q. Mr. Taylor, you have stated that *that* Joe's bayou and the Bayou Mason country before the war was a very fine country?

A. Yes, sir.

Q. What has been its condition since?

A. It has been entirely abandoned.

Q. Will you state the reason, the occasion, of it being abandoned?

A. It was abandoned in consequence of overflow.

Q. What overflow?

A. Overflow from the Mississippi river.

Q. Well, through what br-ake particularly?

A. Ashton br-ake.

Q. Where is the Ashton br-ake?

A. Just on the river up there; part of it lays in Arkansas and part of it in La.—in this State.

Q. Does a large or small volume of water go through when the river is high?

A. There is a very large volume of water going through there.

Q. When did that br-ake occur?

The WITNESS: When did it occur?

Mr. KELLY: Yes; when was the country first inundated from that br-ake?

A. I am not prepared to say. I have forgotten when it occur-ed.

Q. Was it during the war?

A. I believe it was. I am not sure, but I think it was during the war when the break occur-ed.

965 Q. Then about how many years can you approximate; how many years that country has been abandoned?

A. It has been abandoned back there ever since the war. It has been abandoned in two ways—first, in consequence—one reason is in consequence of the overflow; second, the negroes that were there, flocked to the front, and they could not get them to go back there.

Q. Did that cause the depreciation in the value of the lands in that region of the country in 1868?

A. Yes, sir; the lands there now are nominally valueless.

A. About what extent of country laying along the Bayou Mason hills coming east from there—about what extent of country is affected by this water coming through the Ashton br-ake?

A. Well, I suppose it comes up within an average of five (5) miles of the Mississippi river all along, pretty much.

JAMES BEARD sworn and examined on behalf compla-nant.

Direct examination by Mr. KELLY:

Q. Mr. Beard, what is your age and present occupation?

A. Forty (40) years old; assessor for East Carroll parish.

Q. How long have you lived in the parish?

A. Forty (40) years, except four (4) years during the war.

Q. Are you pretty well acquainted with the parish throughout its whole extent; the lands, etc.?

A. Pretty generally.

966 Q. Know the different plantations of the parish and their location?

A. Most of them.

Q. The duty of your office as assessor is to assess a valuation of all plantations in the parish?

A. Yes, sir.

Q. I have here, Mr. Beard, what purports to be a map of a portion of East Carroll parish and a part of West Carroll parish from Ashton down to "Villa Vista," on which the "Carondelet" and "Raleigh" plantations and lands in the vicinity are given. I wish you would look over it and see if it is correct as a general thing. It purports to be a copy of a plan made by McFarland, plantation agent for the "Skipwith district" during the war (handing witness map referred to).

The witness, after looking at, it says:

A. Yes, sir; I think it is.

NOTE.—It is is admitted by counsel for def't to be generally correct.

Document marked No. "35," offered in evidence on the part of complainant, filed.

Mr. KELLY: I have likewise here a tracing—it was admitted and filed in evidence in New Orleans—made from "Hardee's" official map of the State of Louisiana in the year 1871 (handing map referred to to witness).

Q. To the witness: Mr. Beard, you know where the Ashton br-ake is?

A. Yes, sir.

967 Q. Where is it?

A. It is in the northern portion of this parish.

Q. Near the Arkansas line?

A. Yes, sir.

Q. What is the extent of that br-ake; is it a large one?

A. I have not crossed it, but from general information it must be a very wide br-ake. I have only seen it from the Louisiana side. I have not been entirely across it.

Q. What volume of water goes on the upper portion of the parish through that br-ake?

A. All the westernly portion of the parish is overflowed.

Q. From that br-ake?

A. Yes, sir.

Q. Annually?

A. Yes, sir.

Q. To what depth?

A. From one (1) to ten (10) feet.

Q. Coming, now, from the Bayou Mason hills—coming east—about what breadth of country is subject to overflow from the waters going through "Ashton" br-ake?

A. It gets to the levee sometimes.

Q. Generally?

A. I suppose it is on an average of three (3) or four (4) miles.

Q. Did you know that country on Joe's bayou, east of Bayou Mason, before the war?

A. Not a very great deal.

968 Q. Had you a general idea of the country—of the character of the country; was it a very fine country?

A. Yes, sir.

Q. Land was valuable there, then?

A. Yes, sir.

Q. Will you state what effect this inundation from the Ashton br-ake and otherwise has had upon the value of the land in that country?

A. Well, it has destroyed it.

Q. Since what time has that br-ake been down?

A. It occur-ed during the war.

Q. Well, about the year 1868 were the value of lands materially effected by that br-ake?

A. Yes, sir.

Q. The country was abandoned?

A. Yes, sir; the country was abandoned in 1868?

Q. Well, from that time to this that br-ake has never been closed, has it?

A. No, sir.

Q. In assessing lands for the purpose of taxation do you or do you not make a difference in the assessment?

A. Yes, sir; we make a difference.

Q. I have an abstract prepared here from the assessment roll of 1882, in which it appears that "Raleigh" plantation, eleven hundred & sixty (1,160) acres, was assessed at eighteen thousand two hundred and seventy-five dollars ($18,275)?

A. I don't recollect the exact figure, but I made out the roll for 1882. I presume that is correct.

969 Q. Is that *take* abstract taken from the rolls (referring to doc. marked No. 26)?

A. Yes, sir; I made out the roll.

Q. List of property assessed to Judge Wyly from the same roll for the year 1882—the "Bass" place, on the river, nine hundred and eighty-six (986) acres in cultivation, assessed at twelve thousand five hundred dollars ($12,500); that is from your rolls, is it?

A. Yes, sir; made from the same assessment book.

Q. Here is the "Carson" tract, situated on Joe's Bayou, eight hundred and thirty (830) acres, assessed at eight hundred dollars ($800); that is less than a dollar an acre?

A. I assessed those myself; put the value at about a dollar an acre.

Q. Here is the "Kent" tract, west of Monticello bayou, eighty acres, assessed at one hundred dollars ($100)?

A. Yes, sir.

Q. "Mary Wilson" tract, west of Monticello bayou, one hundred

and seventy (170) acres, assessed at one hundred and fifty dollars ($150)?

A. Yes, sir.

Q. "Prentiss" place, situated on Bayou Macon, four hundred and fifty (450) acres, assessed at five hundred dollars ($500); is that the same kind of property?

A. Same style of land.

Q. Jackson tract, four hundred and seventy-one (471) acres
970 assessed at four hundred & seventy-five dollars ($475); is that the same?

A. Yes, sir.

Q. "McNeil" tract, nine hundred and ninety (990) acres, assessed at a thousand dollars ($1,000)?

A. The same class of land.

Q. "Holland" tract, three hundred and eight (308) acres, assessed at three hundred dollars ($300); the same kind of land?

A. Yes, sir.

Q. The "Taylor" tract, the undivided half (½) of a certain tract of land on Joe's bayou, three hundred and twenty (320) acres, assessed at three hundred dollars ($300)?

A. The same class of land.

Q. "Smith" tract, four hundred and twenty-five (425) acres, assessed at four hundred and twenty-five dollars ($425)?

A. That is the same also.

Q. "Shewalter" tract, a thousand and eighty (1,080) acres, assessed at a thousand dollars ($1,000)?

A. The same class of land.

Q. Also the following tracts: The "Vincent" tract, the "Berry" tract, the "Tompkins" tract, the "Faith" tract—all these lands are assessed in township 19 and 20, range 11 east, containing, altogether, three thousand five hundred and eight (3,508) acres, assessed altogether at three thousand five hundred dollars ($3,500). Those lands are in that same region of country—the same sort of land?

A. Yes, sir; the same class of land.

Q. I see here, likewise, assessment of list of property belonging to Judge J. W. Montgomery—"Deesonia" place; is that on the river?

A. It is about two (2) miles below Providence.

Q. Eight hundred and eighty-five (885) acres, assessed at ten thousand dollars ($10,000)?

971 A. Yes, sir.

Q. "Thompson" tract, township 19, range 11 east; which one is that—back land?

A. Yes, sir; that is back land; it was called abandoned land.

Q. "Anderson" tract, on Joe's bayou, four hundred and seventy-six (476) acres, assessed at five hundred dollars ($500)?

A. That is abandoned land.

Q. "Carondelet" plantation; you know that place?

A. Yes, sir.

Q. Lived near there yourself, did you not?

A. Yes, sir; lived right adjoining for a number of years.

Q. State where that is located, with reference to "Raleigh."

A. That is about half (½) a mile west of "Raleigh" plantation, back from the river.

Q. There is eleven hundred and seventy-five (1,175) acres, assessed at fourteen thousand dollars ($14,000)?

A. Yes, sir.

Q. The "Richardson" tract, one hundred and eighty-nine (189) acres, assessed at two hundred dollars ($200); what sort of land is that?

A. It is abandoned land.

Q. "Jefferson Ridge," a thousand and forty (1,040) acres, assessed at eleven hundred dollars ($1,100)?

A. That is abandoned land.

Q. "McNeil" tract, on Joe's bayou, township 19, range 11 east, four hundred and ninety-two (492) acres, assessed at five hundred dollars ($500)?

972 A. That is abandoned land, too.

Q. What is the character of "Raleigh" plantation land and "Carondelet" plantation, as compared with ordinary river cotton lands in this parish?

A. There is very little difference.

Q. Very little difference between those and other river lands generally?

A. They both rank as the best cotton lands in the parish.

Q. You know the "Wilton," "Albion," and "Melbourn" places, that used to belong to the Oliver J. Morgan estate?

A. Yes, sir.

Q. How do the "Carondelet" and "Raleigh" plantations compare with those places?

A. It is about the same class of soil.

Q. You are familiar with what is called the "Pecan Grove," Foster place?

A. Yes, sir.

Q. Where is that situated with reference to "Raleigh?"

A. It is on the Mississippi river, and joins "Raleigh" on the lower side.

Q. Judge Wyly has testified in this case, with regard to that place, that it is a fine place and has not been overflowed for fifty (50) years.

A. It was partially overflowed in 1867.

Q. It is a fine place, is it?

A. Yes, sir.

Q. What do you think was a fair valuation for that land in 1868, say, per acre?

973 A. Well, I don't know that there were any lands sold in 1868; I don't recollect of any lands being sold in 1868, except by the sheriff.

Q. Were lands in this parish rented during those years?

A. Yes, sir.

Q. What was the usual rental per acre?

A. Some lands were rented at a very low price; I think some lands rented for as much as four or five dollars ($4.00 or $5.00) an acre.

Q. There has been a deed offered in evidence in this case from Geo. H. Sheridian, sheriff, to John H. Green, dated 5th Sept., 1868, — seventeen hundred (1,700) acres of land, "Pecan Grove," Foster place; if you had been called upon under oath to appraise those lands for any purpose at that time what value would you have put upon them?

Objected to on the ground that the witness is called upon to give his opinions and conjectures and suppositions as to what he would have done at a particular time; that the opinion and conjectures of the witness is not competent evidence.

A. Well, I can't say now; it has been a great many years back.

Q. Would you have thought that twenty-six hundred dollars ($2,600) — a fair valuation for a place like "Pecan Grove," Foster place?

Objected to on the grounds stated in the last objections.

974 A. No, sir; I would have thought it was worth more money.

Q. Would you consider the assessment at that rate a fair assessment?

Objected to on the ground before stated.

A. No, sir; I would not.

Q. You know John H. Green?

A. I did know him.

Q. Did you know his wife, Mrs. Narcissa Morgan?

A. Yes, sir.

Q. Did you know Ferdinand M. Goorich?

A. I did know him.

Q. Was he related to Mrs. Green?

A. He was her cousin.

Objected to on the ground of irrelevancy.

Q. This deed (refer-ing to doc. marked No. 15, offered in evidence Febr. 27th, 1883, by def't) Judge Wyly purports to have been made under a writ of *fiera facia-* in the suit of F. M. Goodrich against Narcissa J. Morgan, now Green, and the sale purports to have been made to John H. Green; this lady was, I understand, the wife of John H. Green?

A. She was at that time; that was in 1868.

Q. And the plaintiff was her cousin?

A. Yes, sir.

Q. Who does that place belong to now?

A. George Foster.

Q. Do you know when he acquired it?

975 A. No, sir; I don't recollect the exact year.

Q. Do you remember what you assessed it at—about?

A. I assessed the open land at twenty dollars ($20.00) an acre.

Q. Is there any difference in the price of lands now and the price in 1868; are they assessed higher now or lower?

A. I don't know; I was the assessor only last year.

Objected to by def't on the ground of irrelevancy.

Q. Do you consider that there is any material difference in the value of these lands per acre as to what they would bring now and what they brought in 1868?

A. They are considered of more value now.

Q. To what extent do you suppose that value has increased?

Objected to on the ground that the witness is asked his opinion and conjectures.

A. I attribute it to more prosperous times.

Q. To what extent has the value increased; has it doubled, tripled, or quaddrupled?

A. Well, in assessing lands at twenty dollars ($20.00) an acre to derive a revenue we don't mean by that that they are not worth more money; that is what we term "assessed valuation."

Objected to as being irrelevant.

By Judge WYLY:

Q. Well, Mr. Beard, did John H. Green own the "Foster" place at one time?

A. I think he did.

Q. Did he buy it under a judgment of Goodrich against his wife or some one?

976 A. Well, I can't tell positively about that until I examine the deed. (After looking at document marked No. "15," witness says:) Yes; he acquired it under a judgment of Ferd. M. Goodrich.

Q. Did he hold under that title?

A. Yes, sir.

NOTE.—It is admitted that John H. Green held "Pecan Grove" plantation under title marked No. "15."

Q. Did Mr. Green hold under this title?

A. I suppose he did.

Q. Did Mr. Foster acquire title under Mr. Green?

A. I think he did.

Q. Well, now, I will ask you if you know the "Edgewood" or Galloway place or the "Perry Hanna" place?

A. Yes, sir.

Q. The same place being known under three different names?

A. Yes, sir.

Q. How far is that place from "Raleigh" plantation?

A. It is about a mile.

Q. Are the lands upon that place considered about like the rest of the land in that neighborhood?

A. Yes, sir.

Q. Improved as usual?

A. Yes, sir.

R. C. GREEN sworn and examined on behalf of complainant.

977 Direct examination by Mr. KELLY:

Q. State your name and occupation and age.

A. I am thirty (30); merchant.

Q. Mr. Green, how long have you lived in this parish?

A. I was born and raised here.

Q. Do you know most of the lands generally about the parish—the configuration of it?

A. Well, sir, I am tolerably familiar with it.

Q. Do you know where the "Ashton" br-ake is?

A. Well, I know pretty well where it is, but I never was up there.

Q. Where is it?

A. It is about twelve (12) or fifteen (15) miles above here, I think, in a direct line.

Q. Where is it with reference to the parish or State line?

A. I think it is right on the line of Arkansas. A portion of it is in this State.

Q. What is the character of that br-ake with regard to the quantity of water that goes through it?

A. Well, sir, I think as much water goes through "Ashton" br-ake as there is goes down the channel of the river.

Q. Do you know the country, that portion of East Carroll about Bayou Macon and the hills of West Carroll parish; have you a general idea of it?

A. Yes, sir.

Q. What extent of country is directly affected by that Ashton br-ake by the water going through it?

A. Well, it affects all the back lands in this parish.

978 Q. I am speaking now of the lands from the east bank of Bayou Macon to the river.

A. Out to the highland of the river.

Q. My information is that the west bank of Bayou Macon is high?

A. Yes, sir.

Q. And the east bank is low?

A. Yes, sir.

Q. Does it overflow from this water from Ashton br-ake?

A. Yes, sir.

Q. How far east does that inundation extend in high water—how far towards the river?

A. Well, in some places it extends much further than in others. Now the highlands of the upper portion of the parish on the front is nearer to the Macon hills than the highlands of the front portion of the lower part of the parish is to the Macon hills.

Q. I understand, then, that the western circuit of this inundation is the Macon hills, and that the hills come nearer to the river up by Arkansas?

A. Yes, sir.

Q. Look at this map (handing witness map marked —); the limit of that crevasse on the west is Bayon Macon, as it is shown on that map?

A. Yes, sir.

Q. State how near to the Mississippi it comes, as a general thing.

A. I suppose in some places it is six (6) to twelve (12) miles wide at high water.

Q. To what depth?

979 A. In some places it is twelve (12) to fifteen (15) feet and in some places six (6) to three (3) feet deep.

Q. Starting from here (Lake Providence) to a given point west in high water, about how far back would you go before striking the water from Ashton br-ake?

A. You don't go any distance out on the lake before you strike high water.

Q. That is in the immediate vicinity of Lake Providence here?

A. Yes, sir.

Q. Well, now come down by "Raleigh;" how far west would you go before you get to this overflowed country?

A. We used to live four (4) miles back of Goodriche's. This "Ashton" water did not overflow our place. I am not very familiar with the back lands of the southwestern portion of this parish.

Q. Do you know the Joe's bayou country?

A. Oh, yes, sir.

Q. What kind of country was that before the war—before the "Ashton" br-ake I mean?

A. Well, sir, it was considered as being a very fine country.

Q. The lands were cultivated then?

A. Yes, sir.

Q. Do you know how long that br-ake has been up there (referring to the Ashton br-ake)?

A. Well, I think it has been open ever since during the war or the close of the war.

Q. What has been the effect of that br-ake; does it overflow an-ually?

A. Yes, sir.

980 Q. What has been the effect of that overflow upon the value of property back there?

A. The land back there yields no revenue at all except a late crop.

Q. Has the country been abandoned or is it cultivated?

A. Some of it has been abandoned; a few lands out there are cultivated; a small quantity of it.

Q. Well, as a general thing?

A. As a general thing, they are abandoned, sir.

Cross-examination by Judge WYLY:

Q. Mr. Green, if the "Ashton" levee were put up, would not that bayou country, those lands back there, be very valuable?

A. Yes, sir; that is correct.

Q. Would they not be as valuable as river lands?

A. Yes, sir.

Q. So, with a proper system of levees, they would be as fine a body of land as there is in the parish?

A. Yes, sir.
Q. Productive?
A. Yes, sir.
Q. If the levees were put up would you estimate those lands to be worth as much per acre as any land on the river or anywheres else?
A. I would.
Q. So the land has not been destroyed by the overflow; it has only been rendered valueless for the present?
981 A. Exactly; that land is covered with water until so late a period during the year that a man cannot make anything on it; he cannot plant on it unless he plants late, and a late crop on it, after the water goes out of "Ashton" br-ake, don't amount to anything.

By Mr. KELLY:

Q. What sort of an undertaking would it be to stop "Ashton" br-ake?
A. Well, sir, Ashton br-ake is a pretty wide br-ake; some places in it is pretty deep.
Q. Do you know whether the parish or local authorities ever attempted to stop it?
A. I believe at one time the police jury did let some timber come down, and by leaving the timber there it would cause a deposit of the sand to be made there if left to itself.
Q. As a matter of fact, it has remained open since it broke?
A. Yes, sir.

Counsel for complainant offered in evidence document marked No. "36," being copies of Schedule "B," form No. 1, and of the adjudication of bankruptcy in the matter of Mrs. Narcissa J. Green, formerly Narcissa J. Bell, No. 1038 of the docket of the U. S. dist. court, dist. of La.; filed.

Counsel for def't objects to the introduction of the document just offered in evidence and marked No. 36, on the ground of irrelevancy.

Document marked No. 37, offered in evidence on part
982 of complainant, filed, being deed from W. W. Collins, sheriff, to Jackson B. Tompkins, of property seized in the suit of Daniel S. Vinson *vs.* A. M. Waddill, sheriff's sale, 937 acres; price, $14,055.

Document marked No. "38" offered in evidence on the part of complainant, being property sold by W. W. Collins, sheriff, to H'y L. Deeson, dated 1st Febr'y, 1868—1,735 $\frac{2}{100}$ acres of land, 43 mules, 2 horses, 2 colts, and family utensils—for the price of $20,100.64. Document filed.

Document marked No. "39," being certified copy of sale of property by the succession of Jas. G. Carson to W. G. Wyly, Dec. 9th, 1868; filed.

Document marked No. "40," being certified copy of act of sale by W. G. Wyly to A. J. Wyly, Nov. 8th, 1871, of certain property de-

scribed therein for the price of $7,000 (seven thousand dollars); filed.

F. F. MONTGOMERY sworn and examined on behalf of complainant.

Direct examination by Mr. KELLY:

Q. Mr. Montgomery, what is your age and occupation?
A. I am pretty near 53.
Q. Are you a practicing lawyer in this parish?
A. Yes, sir.
Q. Are you well acquainted with the topography of the parish?

983 A. Well, tolerably; I have been over it a great deal.

Q. Here is an act of sale from you to W. G. Wyly that was introduced in evidence by Judge Wyly. I wish you would look at it and say where that property is and what kind of property it is (handing witness paper referred to, marked No. 3).

A. That property is located on the Bayou Macon hills, in West Carroll parish, formerly this parish.

Q. What kind of property is it?

A. That is called hill property; it is high land, above overflow, and not very fertile and not very valuable.

Q. How far is it from the Mississippi river?

A. I suppose about fifteen (15) miles or so.

Q. Is the value of property back there any criterion for the value of cotton lands on the river—Mississippi river?

A. No, sir; the property on the river is regarded as much more valuable that the property on the hills.

Q. Here is an act of sale from Geo. H. Sheridian, sheriff, to Lewis F. Genesis, of Sept. 5th, 1868, 647 acres; price, $215.67; the act was offered in evidence by Judge Wyly. I see by reference to the writ of seizure that you were appointed *curator ad hoc* in the matter. The lands are described as being in the parish of Carrol, at the same time being in township 18, range 13 east. (Referring to document marked No. 17.) You know the Curry "tract?"

A. Yes, sir.

Q. You know it is in this parish?

A. Yes, sir; it is in this parish.

Q. Is it on the river?

984 A. No, sir; I suppose it is four (4) or five (5) miles from the river. It is in Carroll parish, but it is near the Madison line, three (3) miles back from the river.

Q. What is the character of that property?

A. Well, the land is very fertile, but it is subject to overflow.

Q. What was its condition at that time?

A. I think it was overflowed. There was no one living on it when it was sold. It was abandoned on account of the overflows.

Q. Overflowed and abandoned land?

A. Yes, sir; but it had been cultivated a year or so before.

Q. How far back from the river did you say it was?

A. Four (4) or five (5) miles.

Q. Do you know whether it was affected by the waters of the "Ashton" br-ake?

A. Yes, sir; it was.

Q. Subject to an-ual inundation?

A. I think every high water from "Ashton" br-ake goes on it, and then if there is another high water down here I think it goes under.

Q. Do you know where "Ashton" br-ake is?

A. Yes, sir.

Q. Where is it?

A. It is on the Arkansas line.

Q. What is the extent of that br-ake?

A. I know there is a large quantity of water goes out through it.

Q. What portion of the parish does it inundate?

985 A. It inundates every year the country in the Bayou Macon bottoms and along Joe's bayou.

Q. How far towards the Mississippi does that overflow extend?

A. It differs at different seasons. Sometimes it comes within (4) four miles. At this point it varies according to the lands. I may say every year it inundates Bayou Macon, Joe's bayou, and the Tensas bottoms.

Q. The limit of that overflow, as I understand it, is the Bayou Macon hills?

A. Yes, sir.

Q. On the west of Bayou Macon?

A. Yes, sir.

Q. Did you know that part of the country before the "Ashton" br-ake occur-ed?

A. Oh, yes, sir.

Q. What sort of a country was it then?

A. Well, it was a very fertile section of country, in a high state of cultivation most of it.

Q. Where the lands very valuable there then?

A. Yes, sir.

Q. What has been the effect of that br-ake upon property in that region of country?

A. Well, it has brought it from a high state of cultivation down to abandoned land, and from very high prices down to nothing. You can scarcely sell it. They sell plantations out there for taxes.

Q. Here is an act of sale from Geo. H. Sheridan, sheriff, to Jas. G. Wyly, of the "Tempelton" place; the lands are described as being in range 10 east and part of it in range 11 east; do you know where the place is?

986 A. Yes sir; it is on the banks of Bayou Macon.

Q. What is the character of that property?

A. It is pretty high.

Q. Is it on the east bank?

A. Yes, sir; it is on the east bank of Bayou Macon; very fine land; very productive.

Q. I understand it is affected by the "Ashton" br-ake, but I don't know whether it is affected every year.

A. It is affected every year, but I don't know that it all goes under every year; it takes pretty high water to do that.

Q. Has it affected the value of that property materially?

A. Yes, sir; immensely.

No cross-examination.

Notice of Taking Testimony.

U. S. C. C., 5th Circuit, Western Dist. of La. In Equity.

Mrs. MARY E. R. BOYD
vs.
WM. G. WYLY *et als.*
} No. 1.

To Jas. R. Beckwith, Esq., N. O., solicitor for def't.

987 DEAR SIR: Please take notice that an examination of witnesses on behalf of complainant will be held at the office of Mr. Mott, No. 13 Commercial alley, N. O., on Sat., April 28th, 1883, at 2 p. m.

(Signed) J. B. BEATTIE,
Special Examiner.

Served a copy of the above notice on Mr. Beckwith by handing the same to him in person April 27th, 1883.

(Signed) J. B. BEATTIE,
Special Examiner.

Present: J. B. Beattie, special examiner; H'y B. Kelly, Esq., solicitor for complainant; Jas. R. Beckwith, Esq., solicitor for def't.

H. GIBBE MORGAN, Esq., sworn and examined on behalf of complainant.

Direct examination by Mr. KELLY:

Q. Mr. Morgan, state what your profession is.

A. Attorney-at-law, sir.

Q. There has been a deed—a sheriff's deed—introduced in evidence here on behalf of Judge W. G. Wyly, defendant. The sale was made by Collins, sheriff of the parish of Carroll, to H'y Frelson, April 4th, 1868, in the suit of H'y Frelson against S. L. Chambliss, which property, mentioned in the deed, amounts, I think, to a thousand and thirteen (1,013) acres. Do you know where that property is?

988 A. Yes, sir; it is called the "Chambliss" place; it is in the parish of East Carroll, out on Joe's bayou, about (7) or eight (8) miles from Lake Providence.

Q. Back from the river?

A. Back from the river; yes, sir. I am not sure whether it is on Joe's bayou or some of those bayous; I have visited it.

Q. What I want to ascertain is with regard to the character of the lands, with reference to their liability to inundations and overflow.

A. I visited that county about a year and a half or two (2) years ago in the interest of Mr. Frelson; it was in the heart, as I recollect it, of a swamp; I am told it is always overflowed.

Q. Were you in that section of country that is affected by what is called the "Ashton" br-ake?

A. I was never there during an overflow. I was there on the plantation, and all I could see was, I should judge, about twenty (20) acres around that was cleared; not possibly as many as twenty (20) acres. I called for the man who was to lease the place; his wife said he was in the swamp, in the water. He came in and said he was engaged in cutting timber. I asked him some questions with regard to the plantation and what he was doing. He said he could not pay any rent because the property was overflowed all the time.

Counsel for def't objects to all that part of the testimony or answers of witness wherein he recites what was told him by the tenant.

By Mr. KELLY:

Q. I will ask you, Mr. Morgan, whether the price for which
989 such land as that you have refer-ed to would sell for is any criterion for the value of cotton lands on the Mississippi river?

A. Not from my experience. I have endeavored to sell that place and found it impossible to effect a sale; it had the reputation of being overflowed every year. We offered to sell it for eleven hundred dollars ($1,100).

Q. Well, the country along the river in that parish is generally cultivated and produces a large amount of cotton, doesn't it?

A. Well, Col., that would be hearsay also, for I really don't know. We never received anything from that plantation since it has been in our possession.

Cross-examination by Mr. BECKWITH:

Q. Did you ever reside in the parish of East Carroll?

A. No, sir.

Q. To what extent are you familiar with that parish?

A. The only visit I ever made to the parish was in regard to this piece of property, about a year and a half ago.

Q. What property does Mr. Frelson own in that parish other than the property you have testified about?

A. Mr. Frelson has a half interest in a piece of property adjoining Lake Providence on the river; then he owns the "Goveyhood" place, and he owns what is called the Good Home place; it is two miles and a half (2½) miles back from the town of Lake Providence, on the lake.

990 Q. The two places, then, that he owns are free from overflow, excepting the place on the river, when the river gets over its banks?

A. No; the "Good Home" place is subject to overflow; the other is called the "Goveyhood" place; the rear portion of that is subject

to overflow from the waters of Ashton br-ake; that overflows the back of the place.

Q. Now, the place that Mr. Frelson owns on the river—how far is that from the town of Lake Providence?

A. In fact, it is at Lake Providence.

Q. Do you know where the "Raleigh" plantation is?

The WITNESS: To whom does it belong?

Mr. BECKWITH: To Judge Wyly.

The WITNESS:

A. No, sir; I do not.

Q. Do you get any revenue from that place?

The WITNESS: From what place, sir?

Mr. BECKWITH: That river place.

A. We sold the river place about th-e- (3) months ago.

Q. Which one?

A. The "Tempelton" place.

Q. When was that river place bought?

A. This river place was bought in at sheriff'- sale a year ago or more; we bought it in under a writ of execution.

Q. That is all he owns in the parish?

A. That is all, sir.

Q. Was that all you ever saw of the parish?

A. That is all I ever saw of the parish.

991 *Admission.*

It is admitted by counsel for def't that the t- nscript of document marked No. "41" was made for the use of the Supreme Court. It is also admitted that a duly certified copy of the transcript was sent to Washington — an appeal from the circuit court of the United States for the then district of Louisiana; that the printed record was printed in Gov't Printing Office for the use of the Supreme Court on the trial of the case.

Counsel for defendant objects to the introduction of the record marked document No. "41" as evidence in this case on the ground that the record in that case is inadmissiable in evidence in this case for any purpose, either as to the pleadings or decree, depositions or rule, for the reason, among others, that the parties to the record are strangers to this case. It is a record of proceedings in a separate and distinct case, relating to other property and other persons.

Counsel for complainant relies upon the decisions of Justice Wood in that case of Gay against Morgan as authority in this case, and the record is evidence for the purpose, among others, of showing

992 that the various questions of law arising upon the pleadings and evidence in this case are identical with the questions arising from the pleadings and evidence in that case, and that it is proper, that the court may understand the bearing of the decission in that case, that it should be informed of the proceedings. It is introduced further, in connection with the declarations made

by defendant, W. G. Wyly, in regard to matters of *of* fact i-volved in the present suit. It is also offered for all other purposes for which it may be legitimately used in evidence.

Certificate.

I, J. B. Beattie, special examiner, duly appointed by the circuit court of the United States for the fifth circuit, western district of Louisiana, by virtue of the annexed commission issued out said court to me to take dispositions in this cause, do hereby certify that on the several days named in the depositions hereto annexed I was attended, at the city of New Orleans, La., and the town of Lake Providence, East Carroll parish, La., by the counsel and witnes-es aforesaid; that the said witnesses were duly sworn and examined and their depositions reduced to writing, and by agreement of counsel the signatures of the witnesses to their depositions were waived.

I further certify that the accompanying exhibits, marked "A 2," "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "19," "20," "21," "22," "23," "24," "25," "26," "27," "28," "29," "30," "31," "32," "33," "34," "35," "36," "37," "38," "39," "40," "41," "XXX," "XX" were introduced in evidence; also accompanying notices given and orders made during the taking of said depositions. And there being no further witness to be examined for either side before me as special examiner I hereby close the same.

April 30th, 1883.

(Signed) J. M. BEATTIE,
Special Examiner.

993 EXHIBIT "A 2." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by complainant. Filed December 12th, 1882.

(Endorsed:) Disclaimer of H. Otey Railey.

Disclaimer of Hewey Otey Railey.

MRS. MARY E. R. BOYD, by Her Next Friend,
vs.
WM. G. WYLY *et al.*
} In Equity. No. 1.

Hewey Otey Railey hereby appears and makes himself a party to this suit solely for the purpose of entering this his disclaimer therein, and says that he is the H. Otey Railey named in the will of James Railey in the bill of complaint herein mentioned, and that before the filing of said bill he disclaimed and abandoned in writing, as he now disclaims, in favor of the complainant in said bill all right, title, and interest under the terms of said will or otherwise on or to the Raleigh plantation, the property described in said bill, and to the rents and revenues thereof, and he prays that this his disclaimer may be filed of record in the cause and he be hence dismissed.

(Sig'd) H. OTEY RAILEY.

(Sig'd) E. L. BEMISS, *Witness.*

994 No. 1. Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by def'ts Feb'y 26th, 1883. Filed Feb'y 26th, 1883.

(Endorsed:) Deed and subrogation. Daniel S. Vinson to Wm. G. Wyly. Floyd, La., Carroll parish. (Sig'd) T. D. McCandless, recorder.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that this day before me, Thomas D. McCandless, recorder in and for the parish of Carroll, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned—

Personally came and appeared Daniel S. Vinson, a resident of said parish and State, who declared that for and in consideration of the total price and sum hereinafter named, and payable as hereinafter set forth, he has and does hereby grant, bargain, sell, alien, convey, transfer, and deliver, with a full, complete, and perfect guaranty and warranty against all troubles, debts, mortgages, donations, alienations, or other encumberances of whatever kind or nature, not only against his own acts and deeds, but those of his vendors, hereby subrogating the present purchasers to all his rights of action for warranty against his vendors that he could have used himself—

Unto William G. Wyly, a resident of said parish and State,
995 here present, purchasing and accepting for himself, his heirs and assigns, & acknowledging due delivery and possession thereof all and singular the following-described property: All and singular those pieces, parcels, or tracts of land situated, lying, and being in the parish of Carroll, State of Louisiana, and fully described by numbers as the S. E. ¼ of sec. 34 and S. W. ¼ of sec. 35, T. 20, R. 11 east, and lot No. 5 and S. ½ of S. W. frac'l ¼ and N. E. ¼ of S. W. frac'l ¼ and S. E. ¼ of sec. 2, T. 19, R. 11 east, and lots 1, 2, 3, & 4 of sec. 2, T. 19, R. 11 east, and E. ½ of N. E. ¼ of sec. 3, T. 19, R. 11 east, and S. W. ¼ sec. No. 1, T. 19, R. 11 east, and S. ½ of N. W. ¼ and lot No. 3 of sec. No. 1, T. 19, R. 11 east, and lot No. 4 of sec. No. 1, T. 19, R. 11 east, and lots 2, 5, and 6 and W. ½ of N. W. ¼ of sec. 12, T. 19, R. 11 east, and S. ½ of S. W. ¼ and E. ½ of S. E. ¼ of sec. 11, T. 19, R. 11 east, containing 1,734.57 acres, known as the "Berry place."

Also the whole of sec. No. 16, of T. twenty (20) north, of range eleven (11) east, containing 640 acres, more or less.

Also lots 1, 2, 3, and 7 and 8 of section 22, and lot No. 5 of sec. 23, in T. 20 N., of R. 11 east, and the S. E. ¼ of the N. E. ¼ and lot 4 of sec. 22, and the N. E. ¼ of the N. W. ¼ and the S. ½ of the S. E. ¼ of sec. 22, and the S. W. ¼ of the N. W. ¼ of sec. 22, and the N. W. ¼ of the N. W. ¼ of sec. 22, in T. 20 N., of R. 11 east, and containing 560.40 acres, known as the "Force place."

Also the N. E. ¼ of sec. 35 and the S. E. ¼ of sec. 26, of
996 T. 20, R. 11 east, containing 320 acres, more or less, being the lands purchased by said vendor, at sheriff's sale, from Jackson B. Tompkins, as per sheriff's deed of record in the recorder's office of said parish in Notarial Book "M," fol's 340 & 341.

Also all his right, title, interest, and claim as judicial mortgage and attaching creditors in, to, or upon the north ½ of S. E. ¼ of sec. 26 and the N. W. ¼ of S. W. ¼ of sec. 36, of T. 20, R. 11 east, containing 520 acres, more or less, being the land seized in suit No. 5134 on the docket of the 13th judicial dist. court in & for said Carroll parish, styled "D. S. Vinson *vs.* J. B. Tompkins," it being the said Vinson's intention to subrogate the said Wyly to all his rights of every character in and to said suit, as well as all his rights acquired by the sale and relinquishment of Jax. B., Jesse D., and Louisiana G. Tompkins (heirs of the said Jackson B. Tompkins and Cynthia A. Tompkins) in and to the 840 acres of land herein last described and mentioned:

To have and to hold the said described property unto the said William G. Wyly for his own proper use and benefit forever.

And the said Daniel S. Vinson declared furthermore that he does hereby transfer and subrogate the said Wyly to all his rights as plaintiff and as mortgage creditor in and to suit No. 4373 on the docket of the aforesaid court, styled "Daniel S. Vinson *vs.* O. H. P. Keller," hereby subrogating all his rights of whatever kind or nature in and to said suit and fully authorizing and em-
997 powering the said Wyly to exercise them in the same manner that he could have done himself.

Declaring, also, that he does hereby transfer and subrogate the said Wyly to all his rights of every character in and to one certain other suit, numbered on the docket of the court above mentioned "3708" and styled "D. S. Vinson *vs.* Ezekiel Graves," fully authorizing and empowering the said Wyly to exercise all his said rights in as full and complete a manner as he could have done himself.

And declaring, also, that he does hereby transfer and subrogate the said Wyly to all his rights of every kind or nature in and to suit No. 4861 on the docket of the aforesaid court (as well as the judgment therein), styled "D. S. Vinson *vs.* John Martain," whether as plaintiff in said suit or as special mortgage creditor, hereby authorizing and empowering the said Wyly to exercise all his rights in the same manner that he might have done himself.

This present sale and subrogation is made for and in consideration of the total price and sum of five thousand dollars ($5,000.00) cash in hand paid, the receipt of which the said Vinson hereby acknowledges and grants a full and clear acquit-ance therefor.

The mortgage certificate required by article 3328 of the civil code of this State is hereby dispensed with by the parties, and me, recorder, held harmless in the premises.

Thus done and passed, in the parish of Carroll, La., in pres-
998 ence of Robert J. London & J. Peter Guier, lawful witnesses, who hereto sign their names with said parties & me, recorder, on this 23rd of October, A. D. 1868.

(Sig'd) D. S. VINSON.
(Sig'd) W. G. WYLY.
Attest: R. J. LONDON.
J. PETER GUIER.
(Sig'd) T. D. McCANDLESS, *Recorder.*

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I hereby certify that the within and foregoing act is duly recorded in my office in Notarial Book "N," folios No. 132 & 133.

Given under my hand and seal of office this Oct. 23rd, A. D. 1868.

[SEAL.] T. D. McCANDLESS, *Recorder.*

A true copy.

Floyd, La., October 24th, A. D. 1868.

(Sig'd) T. D. McCANDLESS, *Recorder.*

No. "2." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by def'ts Feb'y 26th, 1883. Filed Feb'y 26th, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to W. G. Wyly. Certified copy.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

E. CARVER & Co.
vs.
W. H. HARRIS. } No. 3828.

Be it known that by virtue of a writ of *fieri facias* issued from said court and to me directed, commanding me to seize and sell
999 the following-described property belonging to the defendant, W. H. Harris, to wit: Lots 6, 7, 10, 11, 12, 13, 14, 15, 16, & 17, containing 1,800 acres; the N. ½ of sec's 48 & 49, containing 640 acres, and the E. ½ of sec. 47, containing 320 acres, and the N. ½ of sec's 42 & 43, containing 640 acres, amounting in all to 3,400 acres, all in T. 18, R. 13 east, fronting on the Mississippi river, and comprising the "Villa Vista" and Caney plantation-, together with all the improvements—

I, W. W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 18th day of September, A. D. 1867, seize the above-described property, notice of which seizure I gave to Mrs. Lucy C. Harris, wife of defendant, in writing, and on the 28th day of September, A. D. 1867, I advertised said property for sale in the Carroll Record, a newspaper published weekly in said parish & State, to be sold at the door of the court-house in the town of Floyd, in the said parish and State, on the first Saturday, the second day, of November, A. D. 1867.

And on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon W. G. Wyly became the purchaser thereof for the price and sum of six hundred and fifty dollars, that being the full amount of the appraised value thereof.

1000 Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the

right, title, interest, and claim which the said W. H. Harris has or had in and to said property :

To have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with Robert J. London and Albert G. Belden, witnesses of lawful age, residing in said parish & State, this the second day of November, A. D. 1867.

W. W. COLLINS, *Sheriff*,
By J. W. DRAUGHON, *D'y Sheriff*.
W. G. WYLY.

R. J. LONDON.
A. G. BELDEN.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folios 282 & 283.

Given under my hand and seal of office this the 28th day of October, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk*,
By R. J. LONDON, *D'y Clerk*.

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify that the above and foregoing is a true copy
1001 of the original act on file and duly recorded in this office in Notarial Book "N," folio 140, on the 29th day of October, A. D. 1868.

Given under my hand and seal of office on this 15th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'p'y Recorder.

No. "3." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendants Feb'y 26th, 1883. Filed Feb'y 26th, 1883.

(Endorsed:) Deed. F. F. Montgomery to W. G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that this day before me, Albert G. Belden, deputy recorder in and for the parish of Carroll, State of Louisiana, duly appointed and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Field F. Montgomery, a resident of said parish and State, who declared that for and in consideration of the total price and sum of four hundred ($400.00) dollars to him cash in hand paid, the receipt of which is hereby acknowledged and a full acquittance granted therefor, he has and does hereby grant, bargain, sell.

1002 and deliver, with a — and complete guarantee and warranty against all troubles, debts, mortgages, donations, alienations, or other encumberances of whatever kind or nature, not only against his own acts and deeds, but those of his vendors, hereby subrogating the present purchaser to all his rights of action for warranty against his vendors that he could have used himself, unto William G. Wyly, here purchasing and accepting for himself, his heirs and assigns, and acknowledging due delivery and possesion of the following-described property, to wit: The undivided ½ of the S. W. ¼ and N. ½ of the S. E. ¼ sec. 33, T. 19, R. 10 east, containing 238 (two hundred & thirty-eight) acres, off of northern portion of N. E. ¼ of sec. 4, T. 18, R. 10 east; N. ½ of sec. 33, T. 19, R. 10 east, containing 320 acres, altogether 572 acres, situated in said parish of Carroll, in the district of lands north of Red River; to have and to hold the within and foregoing described property unto the said purchaser for his own proper use, benefit, and behoof forever, and that of his heirs and assigns.

The mortgage certificate required by article 3328 of the civil code of this State is hereby dispensed with by the parties hereto, and me, deputy recorder, held harmless for its non-production at the passing hereof.

Thus done and passed at my office, in the town of Floyd, in said parish of Carroll, in presence of T. D. McCandless and James
1003 W. Draughon, witnesses of lawful age, residing in said parish and State who hereto sign their names with said appearers and me, deputy recorder, on this the 29th day of October, A. D. 1868.

F. F. MONTGOMERY.
W. G. WYLY.

Attest: T. D. McCANDLESS.
J. W. DRAUGHON.

(Sig'd) A. G. BELDEN,
D'y Recorder.

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify that the above and foregoing is a true copy of the original act duly of record in this office in Notarial Book "N," folio 140, on the 29th day of October, A. D. 1868.

Given under my hand and seal of office on this 16th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1004 No. "4." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendants Feb'y 27th, 1883. Filed Feb'y 27th, 1883.

(Endorsed:) Deed and subrogation. John Haynes to Wm. G. Wyly and Thomas P. Haynes.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that this day before me, Thomas D. McCandless, recorder in and for the aforesaid parish and State,

duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared John Haynes, a resident of said parish and State, who declared that for and in consideration of the total price and sum hereinafter named and paid as hereinafter set forth, he has and does hereby grant, bargain, sell, alien, convey, transfer, and deliver, with full and complete guarantee and warranty against all troubles, debts, mortgages, donations, alienations, or other incumberances of whatever kind or nature, not only against his own acts and deeds, but those of his vendors, hereby subrogating the present purchaser to all his rights of action for warranty against his vendors that he could have used himself—

1005 Unto William G. Wyly and Thos. P. Haynes, both residents of said parish and State, here present purchasing and accepting for themselves, their heirs and assigns, and acknowledging due delivery and possession thereof, an undivided half interest each in and to the following-described property, to wit: That plantation situated on Joe's bayou, in said parish and State, and fully described by numbers, according to official survey, as the east half of the southwest quarter of section number eighteen (18), lots one, two, and three, and the northwest quarter of the southeast quarter, in section eighteen (18), lot one (1), northwest quarter of northeast quarter and south half of northeast quarter of section nineteen (19), lot No. eleven (11), in section (17) seventeen, lot No. one (1), and the northeast quarter of the northwest quarter, in section (20) twenty, and the south half of the northwest quarter of section No. twenty (20), all in township No. nineteen (19) north, of range No. eleven (11) east, containing in the aggregate the quantity of five hundred and sixty-nine $\frac{60}{100}$ (569.60) acres of land:

To have and to hold the said described land, together with all the buildings and improvements thereon or thereto belonging, unto them, the said purchasers, for their own proper use, benefit, and behoof forever.

And the said appearer, John Haynes, furthermore declared that for and in consideration of the total price and sum hereinafter set forth he does hereby transfer and subrogate unto the said

1006 William G. Wyly and Thomas P. Haynes all his right, title, and interest in and to suit No. — on the docket of the 13th judicial district court of La. in and for the aforesaid parish, styled "John Haynes *vs.* A. M. Waddell," intending fully to convey unto each of said vendees and undivided half interest in and to said lands and to said suit, hereby subrogating them to all his rights of action and ownership therein.

The present sale and subrogation is made and accepted for and in consideration of the total price and sum of one thousand ($1,000.00) dollars cash in hand paid, the receipt whereof is hereby acknowledged by the vendor and a full and clear acquittance granted therefor.

The mortgage certificate required by article 3328 of the civil code of this State is hereby dispensed with by the parties hereto, and me, recorder, held harmless for its non-production at the passing hereof.

Thus done and passed, at my office, in the town of Floyd, in said parish and State, in the presence of —— —— and —— ——, lawful witnesses, who hereto sign their names with said appearer and me, recorder, on this the 10th day of the month of October, A. D. 1868.

JNO. HAYNES,
THOS. P. HAYNES, &
W. G. WYLY.

Attest: D. A. RICE.
F. F. MONTGOMERY.

(Sig'd) THOS. D. McCANDLESS, *Recorder.*

1007 I hereby certify the above and foregoing to be a true copy of the original act of subrogation on file and duly recorded in the recorder's office of East Carroll, parish and State of Louisiana, in Notarial Book "U," folios 138 and 139, on the 24th day of October, A. D. 1868.

Given under my hand and seal of office this 15th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

No "5." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendants Feb'y 27th, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to William G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that this day, before me, Thomas D. McCandless, recorder in and for the parish and State aforesaid, and in presence of the witnesses hereinafter named and undersigned, personally
1008 came and appeared William W. Collins, sheriff in and for said parish of Carroll, La., and the said appearer declared that on the 28th day of June, A. D. 1867, he received a writ of sale from the hon. 13th judicial district court of La. in and for the aforesaid parish by J. L. Cheatham, clerk of said court, authorizing and requiring him to sell, according to law, the following-described property belonging to the succession of the late Newton Holland, deceased, to wit: The southeast quarter of section number four (4), in township number nineteen (19) north, of range number eleven (11) east, and containing the quantity of one hundred and sixty (160) acres of land, more or less, situated, lying, and being in the parish of Carroll, La., in the district of lands north of Red river; that on the 29th day of the same month and year I advertised said property to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on Saturday, the 3rd day of August, A. D. 1867, at 11 o'clock a. m., and that on said day of sale, after reading the advertisement of sale, which had been published in the "Carroll Record," a newspaper published weekly in said parish and State

for 30 clear days, he offered the land herein described for sale in an audible voice at public auction.

Whereupon William G. Wyly became the purchaser, as the highest and last bidder, for the price and sum of one hundred and
1009 sixty ($160.00) dollars, that being the full amount of the inventorial value of said land, which amount he paid cash in hand, and the said sheriff declared that, in consideration of the premises and by virtue of the authority in him vested by the law of the State of La., he does hereby sell and adjudicate unto the said W. G. Wyly all the right, title, interest, and claims of said succession in and to the property herein mentioned and described:

To have and to hold the said described land unto him, the said William G. Wyly, for his own proper use, benefit, and behoof forever.

Thus done and passed in the parish of Carroll, La., in presence of William A. Hederick and Reuben S. A. McIntyre, lawful witnesses, who hereto sign their names with said sheriff and said Wyly (who signs for the purpose of accepting this act) and me, recorder, on the 3rd day of October, A. D. 1868.

W. W. COLLINS, *Sheriff.*
W. G. WYLY.

Attest: W, A. HEDRICK.
R. S. A. McINTYRE.

(Sig'd) J. W. DRAUGHON, *Recorder.*

I hereby certify the within and foregoing deed is duly of record in my office in Sheriff's Transfer Book "D," folio 60.

Given under my hand and seal this the 9th day of November, 1871.

(Sig'd) A. T. MANNING,
D'y Clerk.

1010 STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify the above and foregoing to be a true copy of the original act on file and recorded in this office, in Notarial Book "N," folio 128, on the 20th day of October, 1868.

Given under my hand and seal of office this the 15th day of Feb'y, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

No. "6." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Geo. A. Sherridan to Jas. G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

SAMUEL TEMPLETON
vs.
D. L. MORGAN, Collector, } 3804.

or

BOARD OF LEVEE COMMISSIONERS *vs.* SAMUEL TEMPLETON.

Be it known that, by virtue of a writ of seizure and sale
1011 issued from said court in the — styled case, and to me directed commanding me to seize and sell the following-described property belonging to the defendant, to wit: Lot No. 4 of sec. 25, S. W. ¼ of sec. 25, N. W. ¼ of sec. 36, T. 19 north, of R. 10; also that portion of the S. E. fractional ¼ of sec. 26 lying east of Monticello bayou and south of Bayou Macon, T. 19 N., of R. 10 east, containing 35 acres, more or less; also N. E. ¼ of sec. 36, T. 19, R. 10, containing 160 acres; S. W. ¼ and N. W. ¼ of sec. 31, T. 19, R. 11 east, containing 320 acres: also N. E. ¼ sec. 31 and the N. W. ¼ and lot No. 2 of sec. 32, T. 19, R. 11 east, containing $330\frac{72}{100}$ acres; also S. E. ¼ of sec. 25, T. 19, R. 10, and S. W. ¼ of sec. 30, T. 19, R. 11, containing 296 acres; also S. E. ¼ and lot No. 11 or fractional S. W. ¼ and S. ½ of N. E. ¼, commencing at the N. W. corner and running to the S. E. corner, dividing said 40 acres diagonally; all of the S. E. ¼ of sec. 29 and the frac. lying east of Joe's bayou, it being that portion of the N. E. ¼ of the S. W. ¼ of sec. 29 supposed to contain 80 acres, containing in all $139\frac{54}{100}$ acres, all in T. 19, R. 11 east, said plantation containing in the aggregate $1{,}565\frac{67}{100}$ acres, more or less:

I, Geo. A. Sheridan, sheriff in and for the parish of Carroll and State of Louisiana, duly commissioned and sworn, and James W. Draughon, agent and attorney-in-fact for Sanders D. Oliver, levee tax collector for said parish and State, did, on the 7th day of September, A. D. 1868, seize the above-described property, notice
1012 of which seizure we served by handing the same to Samuel Templeton in person, in the town of Floyd, in said parish and State, on the same day, month, and year; and on the 12th day of September, A. D. 1868, we advertised said property for sale in the Carroll Record, a newspaper published weekly in the town of Lake Providence, in said parish and State, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on the first Saturday, the 3rd day of October, A. D. 1868, twenty days being sufficient, according to law, for the advertisement of lands being sold by the board of levee commissioners for taxes due them; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, we offered

the same for sale in an audible voice, for cash, without the benefit of appraisement, that being in accordance with the writ issued; whereupon James G. Wyly became the purchaser thereof, as the highest, last, and only bidder, for the price and sum of one thousand dollars, which amount he paid cash in hand, the receipt whereof is hereby acknowledged.

Now, therefore, in consideration of the premises and by virtue of the authority in me vested as sheriff undersigned, and by virtue of the law in me vested as levee tax collector undersigned, by my agent and attorney-in-fact, we do hereby sell and adjudicate
1013 unto the said James G. Wyly, the purchaser hereinbefore mentioned, all the right, title, interest, and claim which the said Sam'l Templeton has or had in and to the foregoing-described property:

To have and to hold the same unto the said J. G. Wyly and his heirs and assigns, for his and their own proper use, benefit, and behoof, forever.

In testimony whereof we hereunto sign our names officially, together with Jas. S. Millikin and Robert J. London, witnesses of lawful age, residing in said parish and State, this the 3rd day of October, A. D. 1868.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHON, *D'y Sheriff.*
S. D. OLIVER. *Levee Tax Coll'r*,
By J. W. DRAUGHON.
Ag't and Att'y-in-Fact.
JAS. G. WYLY.

Attest: J. S. MILLIKIN.
ROB'T J. LONDON.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the within deed is duly recorded in my office in sheriff's transfer Book "C," folio 281.

Given under my hand and seal of office this 17th October, A. D. 1868.

J. L. CHEATHAM, *Clerk*,
By R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of Carroll:*

RECORDER'S OFFICE.

I hereby certify the above and within to be true copy of the original act on file and duly recorded in Notarial Book "N," folios 124 & 125, in this office, on the 19th Oct'r, 1868.

Witness my hand and seal this 14th Feb'y, 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1014 No. "7." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendants. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Sheriff Collins, for Jackson Chambliss, to John Williams and son and W. G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

D. A. McRAE, Use, &c.,
—.
JACKSON CHAMBLISS. } No. 4507.

Be it known that by virtue of a writ of seizure and sale to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Jackson Chambliss, to wit: N. W. ¼ sec. 24 and N. E. ¼ sec. 23, T. 20, R. 11 E., situated in said parish and State, together with all the improvements thereon or thereunto belonging, and containing 325 acres, more or less—

I, William Collins, sheriff in and for said parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 18th day of November, A. D. 1867, seize the above-described property, notice of which seizure I gave to Jackson Chambliss, defendant, in writing, and on the 28th day of November, A. D. 1867, I advertised said property for sale in the "Carroll Record," a newspaper published weekly in said parish and State, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on the first Saturday, the 4th day of January, A. D. 1868; and on said
1015 day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice, whereupon John Williams and son and W. G. Wyly became the purchasers thereof for the price and sum of one dollar per acre and costs of suit, the said John Williams and son taking one-half and Wyly the other half; total price of said purchase being three hundred and twenty-five dollars, cash in hand paid.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchasers all the right, title, interest, and claim which the said Jackson Chambliss has or had in and to said property:

To have and to hold the same unto the said purchaser, his heirs, and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with Jas. W. Draughon and Thos. D. McCandless, witnesses of lawful age, residing in said parish and State, this the fourth day of January, A. D. 1868.

W. W. COLLINS, *Sheriff.*
JOHN WILLIAMS AND SON. [L. S.]
W. G. WYLY. [L. S.]

Attest: J. W. DRAUGHON.
T. D. McCANDLESS.

1016 STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify that the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folios 254 and 255.

Given under my hand and seal of office this the 24th day of April, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk,*
By R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify that the above and foregoing is a true copy of the original sheriff's deed on file in this office and duly recorded in the recorder's office, in said parish and State, in Notarial Book "N," folios 83 and 84, on the 2nd day of May, 1868.

Given under my hand and the seal of said office on this the 12th day of February, A. D. 1883

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1017 No. "8." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. J. W. Draughon, sheriff, to W. G. Wyly,

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that this day, before me, A. G. Belden, deputy recorder in and for said parish, duly appointed and sworn, and in the presence of witnesses hereinafter named and undersigned, personally appeared James W. Draughn, sheriff in and for said parish and State, who declared that whereas, on the 13th day of July, A. D. 1869, he received from the hon. probate court a writ of sale authorizing and requiring him to sell the following-described property belonging to the succession of E. A. Taylor, to wit:

A certain tract or parcel of land lying and being situated on Joe's bayou, in said parish, and bounded, viz: On the north by lands formerly owned by "Motley and Graves," on the west by what is known as the "Troutman place," on the south by lands formerly owned by J. G. Carson, and on the east by the W. F. C. Anderson place, supposed to contain six hundred and fifty acres, more or less; and that on 28th day of same month and year he advertised

1018 said property in the "Elton Eagle," the official newspaper of the parish of Carroll, and published weekly at Elton, La., in said parish, to be sold at the door of the court-house, in said parish, on Tuesday, the 28th of September, A. D. 1869, and that on said day of sale, after reading the advertisement, he was instructed by the attorney for the succession to postpone the sale until Saturday, the 2nd day of October, A. D. 1869, which he accordingly did, and on said 2nd day of October, 1869, he again read the advertisement and offered said property for sale, in an audible voice, at pub-

lic auction; whereupon William G. Wyly, a resident of said parish, became the purchaser for the sum of three hundred and twenty-five dollars, that being the highest bid for same.

And the said sheriff further declared that by virtue of the authority in him vested by the State of Louisiana in the matter of successions he has and does by the- presents sell and adjudicate all the right, title, interest, and claim of said succession in and to said property unto said purchaser for his own proper use and benefit, and that of his heirs and assigns, forever.

These done and passed in my office, in the town of Floyd, in said parish, in presence of T. D. McCandless and Rob't J. London, lawful witnesses, who sign hereto with said parties and me, deputy recorder, on this 9th day of October, 1869.

J. W. DRAUGHN, *Sheriff.*
W. G. WYLY.

Attest: T. D. McCANDLESS.
R. J. LONDON.

(Sig'd) A. G. BELDEN,
Deputy Recorder.

1019 STATE OF LOUISIANA, *Parish of Carroll*:

I hereby certify that the within is a true copy of the original on file and of record in my office.

Given under my hand and seal of office this 25th day of October, A. D. 1869.

[SEAL.] (Sig'd) A. G. BELDEN,
Deputy Recorder.

No. "9." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Geo. A. Sheridan, sheriff, to Wm. G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

— Court.

MRS. SALLIE DE FRANCE and HUSB'D
vs.
WILLIAM D. SMITH. } No. 5738.

Be it known that by virtue of a writ of seizure and sale issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, William D. Smith, to wit, N. W. ¼ and N. ½ of S. W. ¼ of section 9, N. E. fractional ¼ and the N. E. fractional ¼ of S. E. ¼, or lots five of sec. No. 8, all in T. 18, R. 11 E., situated in said
1020 parish of Carroll, La., containing 425 acres, more or less—

I, George A. Sheridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 4th day of November, A. D. 1868, seize the above-described property,

notice of which seizure I gave F. F. Montgomery, *curator ad hoc*, for the defendant, in writing, and on the 7th day of ——, A. D. 1868, I advertised said property in the Elton Eagle, the official newspaper for said parish and State, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on the first Saturday, the 5th day of December, A. D. 1868, for cash, with the benefit of appraisement, and on said day of sale I was instructed by plaintiffs to postpone this sale until the 1st Saturday, the 2d of January, A. D. 1869.

And the Elton Eagle, the official paper for said parish and State, having suspended publication, I was instructed by plaintiffs (to which the *curator ad hoc* consented) to continue the advertisement by posting the same in three public places in said parish and State, which I done by posting one advertisement at the door of the court-house, one in the town of Lake Providence, in said parish and State, and one in the town of Oak Grove, in said parish and State.

And on said day of sale, at the door of the court-house, in said parish and State, I offered said property for sale at public auction to to the highest bidder, after reading the advertisement of sale and the recorder's certificate of mortgages and having said land duly appraised.

1021 Whereupon William G. Wyly became the purchaser thereof for the price and sum of three hundred and fifty-four $\frac{17}{100}$ dollars, which amount he paid in cash, that being $\frac{2}{3}$ of the appraised value, and which amount, less sixty-eight $\frac{31}{100}$ dollars costs, was applied to the partial payment of the execution issued in the above-styled suit.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Wm. D. Smith has or had in and to said property:

To have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with —— —— and —— ——, witnesses of lawful age, residing in said parish and State, this the second day of January, A. D. 1869.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHN, *D'y Sheriff*. [L. S.]
W. G. WYLY. [L. S.]

Attest: A. G. BELDEN.
R. J. LONDON.

STATE OF LOUISIANA, *Parish of Carroll:*

13th Dist. Court.

I hereby certify the within deed is duly of record in my office in Sheriff's Transfer Book "D," folios 7 and 8.

Given under my hand and seal of office this the 14th day of July, A. D. 1869.

(Sig'd) R. J. LONDON, *D'y Clerk.*

1022 I hereby certify the within is a true copy of the original on file and of record in my office.

Given under my hand and seal of office this 14th day of October, A. D. 1869.

(Sig'd) A. G. BELDEN,
Deputy Recorder.

No. "10." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) 3134. Deed. James W. Draughn to William G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

DANIEL S. VINSON
vs.
J. B. TOMPKINS. } No. 5134.

Be it known that by virtue of a writ of *fieri facias* issued from said court in the above-style case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, J. B. Tompkins, to wit: N. ½ and S. E. ¼ of sec. 26, and the N. W. ¼ of S. W. ¼ of sec. 36, townshinp 20, range 11 east, situated in said parish and State, and containing five hundred and twenty acres—

I, James W. Draughan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did on the 14th day of October, A. D. 1869, seize the above-described property, notice of which seizure I gave Field F. Montgomery, *curator ad hoc,*
1023 for defendant, in writing, and on the 31st day December, A. D. 1869, I advertised said property in the Elton Eagle, the official paper for said parish and State, published weekly therein, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on the first Saturday, the 5th day of December, A. D. 1870, for cash, with the benefit of appraisement; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon William G. Wyly became the purchaser thereof for the price and sum of seventeen hundred and thirty-three $\frac{53}{100}$ dollars, that being ⅔ of the appraised value of the same, which amount he paid cash in hand, the receipt whereof is hereby acknowledged.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Jackson B. Tompkins has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with W. R. C. Lyons and H. W. Drake, witnesses of lawful age, residing in said parish and State, this the 5th day of February, A. D. 1870.

J. W. DRAUGHAN, *Sheriff.* [L. S.]
W. G. WYLY. [L. S.]

Attest: W. R. C. LYONS.
H. W. DRAKE.

1024 I hereby certify that the within deed is duly recorded in my office in Sheriff's Transfer Book "D," folio 32.

Given under my hand and seal of office this 13th day of July, A. D. 1870.

(Sig'd) S. D. GLENN, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of Carroll:*

I do hereby certify that the within deed is duly of record in my office in Notarial Book "N," folios 465 and 466.

Given under my hand and seal of office this the 13th day of July, A. D. 1870.

(Sig'd) E. L. KLEINPETER,
D'y Recorder.

STATE OF LOUISIANA, *Parish of Carroll:*

I, Sanders D. Oliver, deputy recorder in and for said parish and State, duly appointed and sworn, do hereby certify that the within is a true and correct copy of the original on file and of record in my office.

Given under my official signature and seal of office on this the 6th day of June, A. D. 1871.

[SEAL.] (Sig'd) S. D. OLIVER,
D'y Recorder.

1025 No. "11." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. E. C. Jackson to W. G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

This contract of sale, this day made and concluded between Edwin C. Jackson, of the one part, and William G. Wyly, of the other, both of the parish and State aforesaid, witnesseth: That for and in consideration of five hundred and fifty dollars, cash in hand paid, the receipt whereof is hereby acknowledged, I, Edwin C. Jackson, have bargained, sold, and delivered, and by these presents do hereby bargain, sell, and deliver, all and singular my plantation, situated on Joe's bayou, in this parish, known by public survey as the northeast quarter of section No. thirty-three, township nineteen, range eleven east; also lots No-. one, five, and six and the southeast quarter of section No. twenty-eight, in township No. nineteen north, of range

eleven east, all in the district of land north of Red river and containing, in the aggregate, four hundred and seventy-one $\frac{12}{100}$ acres, more or less, with all the improvements thereon or thereto belonging, less thirty-two acres lying in the west side of Joe's bayou which is not included in this act of sale:

1026 To have and to hold the above-described plantation unto Wm. G. Wyly, his heirs and assigns, in fee simple forever; and I, Wm. G. Wyly, do hereby accept the deed of sale.

Thus done and signed, in the parish and State aforesaid, on this 7th day of January, A. D. 1869, in the presence of A. J. Wyly and W. C. Jackson, witnesses of lawful age, residing also in the parish of Carroll, Louisiana.

(Signed) E. C. JACKSON.

Attest: W. C. JACKSON.
A. J. WYLY.

I accept this.

W. G. WYLY.

STATE OF LOUISIANA, *Parish of Carroll:*

I hereby certify that I am acquainted with the signatures of the parties above, and acknowledge same to be the genuine signatures of said parties, and I certify same to be the signatures of the witnesses, as well as of the parties, having frequently seen them write and sign their names.

Floyd, La., Nov. 4th, A. D. 1869.

(Sig'd) A. G. BELDEN,
D'y Recorder.

I hereby certify that the within deed is duly recorded in my office in Notarial Book "N," folio 266.

Given under my hand and seal of office this November 4th, 1869.

(Sig'd) A. G. BELDEN,
D'y Recorder.

1027 STATE OF LOUISIANA, *Parish of Carroll:*

I, Sanders D. Oliver, deputy recorder in and for said parish and State, duly appointed and sworn, do hereby certify that the within and foregoing is a true and correct copy of the original on file and of record in my office.

Given under my official signature and seal of office on this the 5th day of June, A. D. 1871.

(Signed) S. D. OLIVER,
D'y Recorder.

No. "12." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Enoch Farmer to William G. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that this day, before me, Albert G.

Belden, deputy recorder in and for the parish of Carroll and State of La., duly appointed and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared

Enoch Farmer, a resident of the parish and State aforesaid,
1028 who declared that, for and in consideration of the total price and sum of six hundred ($600.00) dollars to him cash in hand paid, the receipt of which he hereby acknowledges, and grants a full and clear acquittal therefor, he has and does hereby grant, bargain, sell, transfer, and deliver, with a full guarantee and warranty against all troubles, debts, mortgages, donations, alienations, or other encumbrances of whatsoever kind or nature, not only against his own acts and deeds, but those of his vendors, hereby subrogating the present purchaser to all his rights of action for warranty against his vendors that he could have used himself, unto William G. Wyly, also a resident of said parish and State, here present, purchasing and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession of the following-described property situated in said parish and State, to wit:

The north ½ of sec. 19 and S. W. ¼ of N. W. ¼ of sec. 20, S. E. ¼ of sec. 19, N. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of sec. 30, all in T. 21, range 11 east, containing six hundred and forty-two acres, more or less, together with all the improvements, &c.:

To have and to hold the foregoing property unto the said William G. Wyly for his own proper use, benefit, and behoof forever. The mortgage certificate required by article 3328 of the civil code is

hereby dispensed with by the parties hereto, and me, deputy
1029 recorder, held harmless for its non-production at the passing hereof.

Thus done and passed, at my office, in the town of Floyd, in said parish of Carroll, and in presence of John L. Cheatham and Robert J. London, witnesses of lawful age, residing in said parish, who sign their names with said appearers and me, deputy recorder, this the 28th day of October, A. D. 1868.

(Sig'd) E. FARMER.
(Sig'd) W. G. WYLY.

Attest: J. L. CHEATHAM.
R. J. LONDON.

(Sig'd) A. G. BELDEN,
D'y Recorder.

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify that the above and foregoing is a true copy of the original act as found of record in this office in Notarial Book "N," folio 139, on the 28th day of October, A. D. 1868.

Given under my hand and seal of office this 15th day of Feb'y, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1030 No. "13." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by def't. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Geo. A. Sheridan, sheriff, to J. W. Montgomery.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

BOARD OF LEVEE COMMISSIONERS
vs.
CHARLES B. RICHARDSON.

Be it known that by virtue of a writ of seizure and sale issued from said court in the above-styled suit and to the undersigned authority directed, commanding me to seize and sell the following-described property, to wit: The N. W. ¼ of sec. 26, T. 19, R. 10 E.; lots 3 & 4, S. W. ¼ sec. 26, T. 19, R. 10 E.; also lots 5 & 6, S. W. ¼ of sec. 26, T. 19, R. 10 E.; N. W. ¼ of sec. 35, T. 19, R. 10 east, situated in said parish and State, with all the improvements — or thereto belonging, containing 569 acres, more or less, together with all the improvements thereon or thereto belonging—

I, Geo. A. Sheridan, sheriff of the parish of Carroll, by my legal deputy, James W. Draughn, agent and attorney-in-fact for Sanders D. Oliver, levee tax collector for said parish and State, did, on the first day of July, A. D. 1868, seize the above-described property, notice of which seizure we served by handing the same to
1031 Ed. F. Newman, *curator ad hoc* for the defendant, in person, in the town of Monticello, in said parish and State, on the 2nd day of the same month and year; and on the 7th day of September, A. D. 1868, we advertised said property for sale in the Carroll Record, a newspaper published weekly in the town of Providence, parish of Carroll and State of Louisiana, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the 3rd day, of October, A. D. 1868, 20 days being sufficient, according to law, for the advertisement, being sold by the board of levee commissioners for taxes due thereon; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice, at public auction, for cash, without the benefit of appraisement, that being in accordance with the writ issued; whereupon John W. Montgomery became the purchaser thereof, as the highest, last, and only bidder, for the price and sum of one hundred dollars, which amount he paid cash in hand, the receipt whereof is hereby acknowledged.

Now, therefore, in consideration of the premises and by virtue of the law in me vested as sheriff, undersigned, and by virtue of the authority in me vested as levee tax collector, undersigned, by my agent and attorney-in-fact, we do hereby sell and adjudicate unto the said John W. Montgomery all the right, title, & interest
1032 which the said Charles B. Richardson has or had in and to

the above-described property; to have and to hold the same unto him, his heirs and assigns, forever.

In testimony whereof we hereunto sign our names officially, together with Robert J. London and Albert G. Belden, lawful witnesses, this the 3rd day of October, A. D. 1868.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHN, *D'y Sheriff*.
S. D. OLIVER,
Levee Tax Collector.
By J. W. DRAUGHN,
Ag't & Att'y-in-Fact.
J. W. MONTGOMERY.

Attest: R. J. LONDON.
A. G. BELDEN.

STATE OF LOUISIANA, *Parish of Carroll*:

13th District Court.

I hereby certify that the foregoing deed is duly recorded in my office in Sheriff's Transfer Book "C," folio- 291 and 292.

Given under my hand and seal of office this the 21st day of November, 1868.

(Sig'd) ROB'T J. LONDON, *D'y Clerk*.

STATE OF LOUISIANA, *Parish of East Carroll*:

RECORDER'S OFFICE.

I hereby certify that the above and foregoing is a true copy of the original act, duly recorded in this office in Notarial Book "N," folios 192 and 193.

Given under my hand and seal of office this 16th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1033 No. "14." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Geo. A. Sheridan, sheriff, to C. T. Motley.

STATE OF LOUISIANA, *Parish of Carroll*:

13th District Court.

PETER J. GUIER
vs.
H. B., J. F., and L. M. TROUTMAN. } No. 4385.

Be it known that by virtue of a writ of *fiere facias* issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendants, H. B., J. F., & L. M. Troutman, to wit: That certain tract of land and plantation in this parish, on Joe's bayou, described by

numbers, according to official survey, as lot No. 3 of sec. 8, the west half of northwest quarter of section 8, the west half of southwest quarter and lot No. 10 of section 8, the east half of southeast quarter and S. W. quarter of S. E. quarter of section 7, the northwest quarter of the northwest quarter of section 17, and lot No. 2 of section 17, and northeast quarter of section 17, less 40 acres sold to C. T. Motley, and lots 6, 7, 8, 9 and southeast quarter of southeast quarter of sec. 8, and south half of south half of section No. 9, and northwest quarter of southwest quarter of section No. 9,
1034 and lot 3 and that portion of lot No. 4 lying west of the slough making out of "Carraway Lake," in section 9, all in township No. 19 north, of range No. 11 east, containing twelve hundred acres, more or less, together with all the improvements thereon or thereto belonging—

I, Geo. A. Sheridan, sheriff of the parish of Carroll, State of Louisiana, duly commissioned and qualified, did, on the 9th day of October, A. D. 1868, seize the above-described property under said writ, notice of which seizure I served by handing the same to W. G. Wyly, *curator ad hoc*, in person, in the town of Floyd, in said parish and State, and on the 12th day of the same month and year I advertised said property for sale in the "Elton Eagle," the official paper for said parish, to be sold at the door of the court-house in the town of Floyd, in said parish & State, on the first Saturday, the 5th day, of December, 1868, for cash, with the benefit of appraisement; and on said day of sale I was instructed by the plaintiff to postpone this sale and continue the advertisement until the first Saturday, the 2nd day, of January, A. D. 1869, to be sold at the same place and on the terms aforesaid; and I accordingly continued said advertisement in the newspaper above mentioned, viz., the Elton Eagle, as directed; and on the 15th of December, A. D. 1868, the writ issued, being about to expire, was returned, after making and retaining a certified copy, under which to make sale; and on the first
1035 Saturday, the 2nd day, of January, A. D. 1869, at the door of the court-house in the town of Floyd, in said parish and State, after reading the advertisement and the recorder's certificate of mortgages and having said land duly appraised, I offered said land for sale, in an audible voice, at public auction, to the highest bidder, on the terms aforesaid; whereupon Creed T. Motley became the purchaser for the price and sum of six hundred dollars, that being the full amount of the appraised value of said land, one-half of which amount, less ($368.82) three hundred and sixty-eight .82 dollars, he retained in his hands in part satisfaction of his *pro rata* share of the judgment under which this *fi. fa.* was issued; the remaining one-half he also retained in his hands to pay and satisfy the *pro rata* share of the owner of the other half of said judgment and the mortgage note which bears equally with the one under which this *fi. fa.* was issued.

Now, in consideration of the premises and by virtue of the authority in me vested, I do, by these presents, sell and adjudicate unto the said C. T. Motley all the right, title, and interest or claim of the said H. B., J. F., & M. L. Troutman in and to the foregoing-

described property; to have and to hold the same unto the said purchaser and his heirs and assigns for his and their own proper use, benefit, and behoof forever.

Thus done and executed in said parish and State, in pres-
1036 ence of Cyrus A. Hedrick and Rob't J. London, lawful witnesses, who hereto sign with said purchaser and me, the said sheriff, this the 2nd day of January, A. D. 1869.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHON, *D'y Sheriff*.
C. T. MOTLEY.

Attest: C. A. HEDRICK.
R. J. LONDON.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify that the within deed is duly of record in my office in Sheriff's Transfer Book —, folios 294 and 295.

Given under my hand and seal of office this 2nd day of January, A. D. 1869.

(Sig'd) S. DUNCAN GLENN, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the above and within is a true copy of the original act on file and of record in said office in Notarial Book "N," folio 204, on the 2nd day of January, A. D. 1869.

Given under my hand and seal of office this the 17th day of Feb'ry, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1037 No. "15." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Geo. A. Sheridan, sheriff, to John H. Green.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

FERD. M. GOODRICH
vs.
NARCISSA J. MORGAN, now GREEN. } No. —.

Be it known that by virtue of a writ of "*fieri facias*" issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Narcissa J. Morgan, to wit: Lots 41, 42, 43, 44, 48, and the lower ½ of lot 49, in T. 19, R. 13 E., and lot No. 1 and the upper half of lot No. 2, in T. 19, R. 14 E., containing altogether 1,150

acres, more or less; also lots 7 & 8, in T. 19, R. 14 E., 330.19 acres; also the N. ½ of sec. 56, in T. 19, R. 13, containing 318.40 acres; also an undivided ½ of a lot of 120 acres, owned with Oliver J. Morgan, in sec. 51, T. 19, R. 13 E., being 60 acres; also an undivided ½, with H. Hood, of the W. ½ of sec. 52, in T. 21, R. 12 E., containing 160.38 acres, situated in said parish and State, with all her interest in the buildings thereon or thereto belonging—

1038 I, Geo. A. Sheridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 21st day of June, A. D. 1868, seize the above-described property, notice of which seizure was waived by J. W. Montgomery, for defendant, in writing, and on the 1st day of August, A. D. 1868, I advertised said property for sale in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the 5th day, of September, A. D. 1868, and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgages, I offered the same for sale in an audible voice; whereupon John H. Green became the purchaser thereof for the price and sum of seventeen hundred and thirty-four dollars, that being ⅔ of the appraised value of — land.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Narcissa J. Morgan, now Green, has or had in and to said property:

To have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

1039 In testimony whereof I hereunto sign my name officially, together with T. D. McCandless and A. G. Belden, witnesses of lawful age, residing in said parish and State, this the 5th day of September, A. D. 1868.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHON, *D'y Sheriff*.

Attest: T. D. McCANDLESS.
A. G. BELDEN.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify the above and within deed is duly recorded in my office in Sheriff's Transfer Book "C," folio 280.

Given under my hand and seal of office this the 17th day of October, A. D. 1868.

(Sig.) J. L. CHEATHAM, *Clerk*,
By R. J. LONDON, *D'y Clerk*.

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify the above and within to be a true copy of the

original act on file and duly recorded in said office in Notarial Book "N," folio- 122 and 123, on the 19th day of October, A. D. 1868.

Witness my hand and seal of office on this the 14th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1040 No. "16." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defenendant. Filed February 27th, 1883.

(Endorsed:) 5592. Deed. W. W. Collins to Charles McAllister.

STATE OF LOUISIANA, *Parish of East Carroll:*

Thirteenth District Court.

CHARLES MCALISTER
vs.
J. W. H. RUCKER. } No. 5592.

Be it known that by virtue of a writ of "*fiera facias*" issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property *property* belonging to the defendant, J. W. H. Rucker, to wit:

The S. E. fraction-l ¼ sec. 23, and lots No. 1 sec. 26, R. 11 E., and lot 2, in T. 26, and S. E. ¼ of N. E. ¼ of sec. 26, and lots 3, 4, 5 of sec. 25, and W. ½ of S. W. ¼ of sec. 24, T. 23, R. 11 E, containing 363.63 acres; the amount or portion which lies on the south side of the ditch nearest W. W. Old, supposed to be 15 or 20 acres, which was sold by T. J. Couch to W. W. Old; also the land mentioned in certificate 2350, U. S. internal improvement land, to wit: W. ½ of N. E. ¼ sec. 26, T. 20, R. 11 east, the whole tract containing 410 acres, more or less, with all the improvements thereon or thereto belonging—

I, W. W. Collins, sheriff in and for said parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 21st day
1041 of November, A. D. 1867, seize the above-described property, notice of which seizure I gave to J. W. H. Rucker, defendant, in writing, on the 30th day of November, A. D. 1867. I advertised said property for sale in the "Carroll Record," a newspaper published weekly in said parish and State, on the first Saturday, the 4th day, of January, A. D. 1868, and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Charles McAlister became the purchaser thereof for the price and sum of four hundred and ten dollars, which amount, less fifty-four dollars and sixty cents, he retained in his hands in part satisfaction of the execution issued in this case, that being the full amount of the appraised value of said land on the day of sale.

Now, in consideration of the premises and by virtue of the authority in me vested by the laws of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right,

title, interest, and claim which the said James H. Rucker has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with Albert G. Belden and Wm. G. Wyly, witnesses of lawful
1042 age, residing in said parish and State, this the 4th day of January, A. D. 1868.

W. W. COLLINS, *Sheriff*,
By J. W. DRAUGHAN, *D'y Sheriff*.
CHARLES McALISTER.

Attest: A. G. BELDEN.
W. G. WYLY.

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify the above and foregoing to be a true copy of the original sheriff's deed on file and of record in this office in Notarial Book "N," folios 40 and 41, on the 24th day of January, A. D. 1868.

Witness my hand and the seal of said office on this the 12th day of Feb'y, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

No. "17." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. Geo. A. Sheridan to Lewis F Generis.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

ABUT and GENERIS
vs.
WM. C. CURRIE. } No. 4860.

1043 Be it known by a writ of "*fiera facias*" issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, William C. Currie, to wit:

The E. ½ of sec. 44 and E. ½ of sec. 45, T. 18, R. 13 E., containing 647 acres, more or less—

I, Geo. A. Sheridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 22nd day of July, A. D. 1868, seize the above-described property, notice of which seizure I gave F. F. Montgomery, *curator ad hoc* for the defendant, in writing, on the same day, month, and year, and on the first day of August, A. D. 1868, I advertised said property in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the 5th day, of September, A. D. 1868,

for cash, with the benefit of appraisement, and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice.

Whereupon Lewis F. Generis, by his attorneys, Sparrow and Montgomery, became the purchaser thereof for the price and sum of two hundred and fifteen $\frac{67}{100}$ dollars, that being $\frac{2}{3}$ of the appraised value of said land, which amount Sparrow and Montgomery retained in their hands as attorneys for Abut and Generis. Now, in con-
1044 sideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said William C. Currie has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with —— —— and —— ——, witnesses of lawful age, residing in said parish and State, this the 5th day of September, A. D. 1868.

GEO. A. SHERIDAN, *Sheriff*, [L. S.]
By J. W. DRAUGHON, *D'y Sheriff*.
LEWIS F. GERERIS, [L. S.]
By SPARROW AND MONTGOMERY.

Attest: C. A. HEDRICK.
A. G. BELDEN.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the within deed is duly of record in my office in Sheriff's Transfer Book "C," folio 288.

Given under my hand and seal of office this 20th day of November, A. D. 1868.

(Sig'd) R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the within and foregoing is a true copy
1045 of the original act duly recorded in this office in Notarial Book "N," folios 189 & 190, on the 22nd day of November, A. D. 1868.

Given under my hand and seal of office this 16th day of February, A. D. 1883.

(Sig'd) GEO. J. HOOK, *D'y Clerk.*

No. "18." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by def't. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to Henry Frellsen.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

FRELISEN and STEVENSON
vs.
GEORGE G. WILSON. } No. 3582.

Be it known that by a virtue of a writ of "*fiera facias*" issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Geo. G. Wilson, to wit:

Lots or fractional sections No-. 30, 31, 32, and 52, in township 21, range 12 east, district of lands north of Red River, Louisiana, together with all the improvements thereon or thereunto belonging, containing 532 acres, more or less—

I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the
1046 23rd day of January, A. D. 1868, seize the above-described property, notice of which seizure I gave Ed. F. Newman, *curator ad hoc*, and John L. Cheatham, clerk of the district court and *ex officio* administrator of the succession of George G. Wilson, deceased, defendant, in writing, and on the first day of February, A. D. 1868, I advertised said property in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the 7th day, of March, A. D. 1868, and on said day of sale I was instructed to postpone this sale until the first Saturday, the 4th day, of April, A. D. 1868, for cash, without the benefit of appraisement, and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Henry Frellsen, by his attorney, M. Du Bose, became the purchaser thereof for the price and sum of three thousand dollars, which amount he paid in cash, the receipt of which is hereby acknowledged.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said George G. Wilson has or had in and to said property:

1047 To have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with John Peter Guire and Rob't J. London, witnesses of lawful age,

residing in said parish and State, this the 4th day of April, A. D. 1868.

(Sig'd) W. W. COLLINS, *Sheriff*, [L. S.]
(Sig'd) By J. W. DRAUGHON, *D'y Sheriff*.
M. Du BOSE. [L. S.]

Attest: J. P. GUIER,
R. J. LONDON.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folio 252.

Given under my hand and seal of office this 15th day of April, A. D. 1868.

[SEAL.] (Sig'd) J. L. CHEATHAM, *Clerk*,
By R. J. LONDON, *D'y Clerk*.

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify that the above and foregoing sheriff's deed is a true and correct copy of the original act on file and duly recorded in Notarial Book "N," folio 80 (in this office), on the 15th day of April, A. D. 1868.

Witness my hand and the seal of this office on this the 12th day of Feb'y, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1048 No. "19." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27, 1883.

(Endorsed:) No. 5047. Henry Frellsen *vs.* S. L. Chambliss. Deed. W. W. Collins, sheriff, to Henry Frellsen.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

HENRY FRELLSEN
vs.
S. L. CHAMBLISS. } No. 5047.

Be it known that by virtue of a writ of "*fiera facias*" issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, S. L. Chambliss, to wit:

The south ½ of the S. W. ¼ of sec. 57, the S. ½ of the S. E. ¼ of sec. 58, and the N. ½ of the E. ½ of sec. 59, T. 21, R. 12 E., containing 513 acres; also the N. W. ¼ and W. ½ of N. E. ¼ and 27 acres of the north portion of the S. ¼ of sec. 60, situated in said parish and State, containing in the aggregate 500 acres, being the same known as the

Jesse H. Chaney "Old Place," together with all the improvements thereon or thereto belonging—

1049 I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 3rd day of February, A. D. 1868, seize the above-described property, notice of which seizure I gave Field F. Montgomery, *curator ad hoc*, defendant, in writing, and on the 22nd day of February, A. D. 1868, I advertised said property in the "Carroll Record," a newspaper published weekly in said parish and State, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on the first Saturday, the fourth day, of April, A. D. 1868, for cash, with the benefit of appraisement; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice.

Whereupon Henry Frellsen, by his attorney, J. W. Montgomery, became the purchaser thereof for the price and sum of sixteen hundred and eighty-eight $\frac{34}{100}$ dollars, which amount, less the sum of eighty-one $\frac{55}{100}$ dollars, he retained in his hands in part satisfaction of the execution issued in this case.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Samuel L. Chambliss has

1050 or had in and to said property; to have and to hold unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with J. W. Draughon and R. J. London, witnesses of lawful age, residing in said parish and State, this the fourth day of April, A. D. 1868.

(Sig'd) W. W. COLLINS, *Sheriff.* [L. S.]
(Sig'd) HENRY FRELLSEN,
By SPARROW AND MONTGOMERY, *Ag'ts.*

Attest: J. W. DRAUGHON.
R. J. LONDON.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folios 257 and 258.

Given under my hand and seal of office this the 15th day of June, A. D. 1868.

(Sig'd) R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify the above and foregoing to be a true copy of the original sheriff's deed on file and duly recorded in said office on the 15th day of June, 1868, in Notarial Book "N," folio 92.

Given under my hand and seal of office this the 12th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1051 No. "20." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to T. M. and J. M. Allen and Co.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

T. M. & J. M. ALLEN & Co.
vs.
WILL. S. OWEN. } No. 5518.

Be it known that by virtue of "*fiera facias*" issued from said court in the above-styled suit and to me directed, commanding me to seize and sell the following-described property belonging the defendant, William S. Owen, to wit: The N. E. ¼ of sec. 28 & the S. E. ¼ of sec. 28, the N. E. ¼ of sec. 33, all in T. 21, R. 10 E., containing four hundred and eighty acres, more or less, situated in Carroll parish, in the district of lands north of Red river, Louisiana—

I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 20th day of February, A. D. 1868, seize the above-described property, notice of which seizure I gave Will. S. Owen, defendant, in writing; and on the 29th day of Feb'y, A. D. 1868, I advertised said property in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on the first Saturday, the fourth day, of April, A. D. 1868, for cash, with the benefit of appraise-
1052 ment, and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recor der's certificate of mortgage, I offered the same for sale in an audible voice.

Whereupon T. M. & J. M. Allen & Co., by their attorney, F. M. Goodrich, became the purchaser thereof for the price and sum of one hundred and sixty dollars, that being ⅔ of the appraised value of said land, which amount, less $52.20, costs of this suit, they retained in their hands (less $52.20 costs) in part satisfaction of the execution issued in this case.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Will. S. Owen has or had in and to said property:

To have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with Edward J. Delany and James W. Draughon, witnesses of lawful age, residing in said parish and State, this the 4th day of April, A. D. 1868.

(Sig'd) W. W. COLLINS, *Sheriff.*
(Sig'd) FRED. M. GOODRICH, *Att'y.*

Attest: E. J. DELANY.
J. W. DRAUGHON.

1053 STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folio 262.

Given under my hand and seal of office this the 24th day of July, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk,*
By R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the above and foregoing is a true copy of the original sheriff's deed as recorded in this office in Notarial Book "N," folios 96 and 97, on the 27th day of July, A. D. 1868.

Given under my hand and seal of office on this the 14th day of February, A. D. 1883.

(Sig'd) GEO. J. HOOK,
D'y Recorder.

No. "21." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants. Filed February 27th, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to F. M. and J. M. Allen & Co.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

1054 F. M. & J. M. ALLEN & Co.
vs.
A. M. WADDILL. } No. 5519.

Be it known that by virtue of a writ of "*fiera facias*" issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Anderson Waddill, to wit:

The S. east quarter of section No. 30, township No. 21 north, of range eleven east, containing one hundred and sixty acres, more or less, I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 20th day of February, A. D. 1868, seize the above-described property,

notice of which seizure I gave Anderson M. Waddill, defendant, in writing; and on the 29th day of February, A. D. 1868, I advertised said property in the Carroll Record, a newspaper published weekly in said parish & State, on the first Saturday, the fourth day, of April, A. D. 1868, for cash, with the benefit of appraisement; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon F. M. and J. M. Allen & Co. and Gabriel Kahn, by their attorney, F. M. Goodrich, became
1053 the purchaser thereof for the price and sum of one hundred and seven $\frac{55}{100}$ dollars, that being two-thirds of the appraised value of said land, which amount they retained in their hands (less 49.32 costs) in part satisfaction of the execution issued in this case.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Anderson M. Waddill has or had in and to said property:

To have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with Edward J. Delany and J. W. Draughon, witnesses of lawful age, residing in said parish and State, this the 4th day of April, A. D. 1868.

(Sig'd) W. W. COLLINS, *Sheriff.*
(Sig'd) FERD. M. GOODRICH, *Att'y.*

Attest: E. J. DELANY.
J. W. DRAUGHON.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folio 279.

Given under my hand and seal of office this the 17th day of October, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk,*
By R. J. LONDON, *D'y Clerk.*

1056 STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the above and foregoing is a true copy of the original sheriff's deed as recorded in said office in Notarial Book "N," folio 96, on the 27th day of July, A. D. 1868.

Given under my hand and official seal of office on this the 14th day of Feb'y, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

No. "22." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to Enoch Farmer.

STATE OF LOUISIANA, *Parish of Carroll :*

Thirteenth District Court.

ENOCH FARMER vs. P. K. MONTGOMERY. } No. 5283.

Be it known that by virtue of a writ of "*fiera facias*" issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, P. K. Montgomery, to wit: The N. ½ of sec. 19 & S. W. ¼ of N. W. ¼ of sec. 20, S. E. ¼ of sec. 19, N. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of sec. 30, all in township 21, R. 11 east,
1057 containing 642 acres, more or less, together with all the improvements thereon or thereto belonging—

I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 23rd day of November, A. D. 1867, seize the above-described property, notice of which seizure I gave by handing the same to E. J. Delony, *ad hock*, for the defendant, in writing; and on the 30th day of November, A. D. 1867, I advertised said property for sale in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, on first Saturday, the 4th day, of January, A. D. 1867; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice.

Whereupon Enoch Farmer became the purchaser thereof for the price and sum of four hundred and eighty-one $\frac{50}{100}$ dollars, which amount, after payment of all costs, he retained in his hands in satisfaction of execution issued in this case, and under which the same was sold, less the sum of thirty-one $\frac{74}{100}$ dollars, which he paid cash in hand.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title,
1058 interest, and claim the said P. K. Montgomery has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with Albert G. Belden and John P. Guier, witnesses of lawful age,

residing in said parish and State, this the 4th day of January, A. D 1869.

(Sig'd) W. W. COLLINS, *Sheriff*,
By J. W. DRAUGHON, *D'y Sheriff*,
(Sig'd) E. FARMER.

Attest: A. G. BELDEN.
J. P. GUIER.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify the within deed is duly of record in my office in Sheriff's Transfer Book "C," folios 246 and 247.

Given under my hand and seal of office this 11th day of March, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk*,
By R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the above and foregoing is a true copy of the original act as of record in this office in Notarial Book "N," folios 68 and 69, and recorded on the 11th day of March, A. D. 1868.

Given under my hand and the seal of this office on this the 12th day of Feb'y, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1059 No. "23." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed Feb'y 27th, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to H. R. Lott, tutor of the minors, Clara L., Elizabeth S., Benjamin H., and Henry A. Williams, and Miss Emma P. Williams.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

H. R. LOTT, Tutor, *et als.*,
vs.
BEN. C. WILLIAMS. } No. 5550.

Be it known that by virtue of a writ of *fiera facias* issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Ben. C. Williams, to wit: The S. E. ¼ S. 13, S. W. ¼ of N. E. ¼ of sec. 13, S. E. ¼ sec. 14, S. W. ¼ of sec. 13, N. E. ¼ of sec. 24, N. E. ¼ of N. W. ¼ of sec. 24, S. E. ¼ of N. E. ¼ of sec. 13, T. 18 N., of R. 9 E.; W. ½ of S. W. ¼ of sec. 18, W. ½ of N. W. ¼ of sec. 18, T.

18 N., of R. 9 E.; N. ½ of sec. 19, — N., of R. 10 E., situated in said parish and State, with all the improvements thereon or thereto belonging, containing 1,520 acres, more or less; also eight head of mules—

1060 I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 13th day of November, A. D. 1867, seize the above-described property, notice of which seizure I served by handing the same to Ben. C. Williams, defendant, in writing, and on the same day, month and year, at his residence, in said parish and State, and on the 30th day of the same month and year I advertised the above-described property in the Carroll record, a newspaper published weekly in the town of Lake Providence, in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the first day, of January, A. D. 1868, for cash, with the benefit of appraisement, and on the said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale, in an audible voice, at public auction to the highest bidder.

Whereupon Hiram R. Lott, tutor of the minor heirs of Mrs. Saphronia Pope, dec'd, wife of Ben. C. Williams, defendant, viz., Clara L. Williams, Elizabeth S. Williams, Benjamin H. Williams, and Henry A. Williams, and Miss Emma P. Williams, major heir of the said Mrs. Saphronia Pope, became the purchaser- thereof as follows, to wit:

Hiram R. Lott as aforesaid became the purchaser of four-fifths of the property herein described for and in behalf of said minors, and Miss Emma P. Williams became the purchaser of one-fifth in her own right, said purchase being made jointly between the said

1061 Hiram R. Lott, tutor, and the said Miss Emma P. Williams for the price and sum of one thousand seven hundred and sixty dollars, that being the full amount of the appraised value of said property, the land having been appraised at one thousand five hundred and twenty dollars and the mules at two hundred and forty dollars; which amount, less $101.35 costs in the above-styled case, *were* credited on the execution issued in said case in part payment thereof.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser- all the right, title, interest, and claim which the said Ben. C. Williams has or had in and to the said property:

To have and to hold the same unto the said purchasers, their heirs and assigns, for their own proper use, benefit, and behoof forever.

In testimony whereof I hereunto sign my name officially, together with James W. Draughon and William J. Duncan, witnesses of

lawful age resiging in said parish and State, this the 4th day of January, A. D. 1868.

(Sig'd) W. W. COLLINS, *Sheriff.*
(Sig'd) H. R. LOTT, *Tutor.*
(Sig'd) EMMA P. WILLIAMS.

Attest: J. W. DRAUGHON.
WM. J. DUNCAN.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

1062 I hereby certify that the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folios 247 and 248.

Given under my hand and seal of office this 11th day of March, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk,*
By R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify the within to be a true copy of the original deed on record in this office in Notarial Book "N," folios 69 and 70, recorded on the 11th day of March, A. D. 1868.

Given under my hand and official seal on this the 12th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

No. "24." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed February 27th, 1883.

1063 United States Court of Claims. December Term, 1873.

F. W. Boyd, executor, *vs.* The United States.
B. R. Thomas and Thomas W. Mason *vs.* The United States.
Thomas Watts and Annie L., his wife, *vs.* The United States.
Allen Jones *vs.* The United States.
Lizzie Hamilton, administratrix, *vs.* The United States.
Josiah Winchester *vs.* The United States.
Oliver T. Morgan, tutor, *vs.* The United States.
Oliver T. Morgan, executor, *vs.* The United States.
Simon Witkowski *vs.* The United States.
Catharine Carson, executrix, *vs.* The United States.
Benjamin C. Williams *vs.* The United States.
James H. Purdy and Wife *vs.* The United States.
Helen C. Key *vs.* The United States.

Court of Claims.

Frederick W. Boyd, ex'r, — The U. S. (and other cases set out in full.)

These cases having been brought to hearing upon the report of Eben Eveleth, Esq., the special commissioner heretofore appointed, bearing date the 4th April, 1874, and upon the exceptions thereto filed by certain of the parties, and the Court, after hearing counsel for the respective parties, *have*, upon the evidence, overruled the report in certain particulars and referred it back for correction
1064 in pursuance of specific instructions at the same time transmitted to the commissioner, and the commissioner having now made a corrected report in conformity with the facts found by the Court—

It is ordered that the corrected report, bearing date the 14th May, 1874, be in all things confirmed.

And it is further ordered in the following cases, viz:

United States Court of Claims. December Term, 1873.

J. W. Boyd, executor, *vs.* The United States.
B. R. Thomas and Thomas W. Mason *vs.* The United States.
Simon Witkowski *vs.* The United States.
Thomas Watts and Annie L., his wife, *vs.* The United States.
Allen Jones *vs.* The United States.
Lizzie Hamilton *vs.* The United States.
George Watt *vs.* The United States,
Oliver T. Morgan, tutor, *vs.* The United States.
Oliver T. Morgan, executor, *vs.* The United States.
Catharine Carson, executrix, *vs.* The United States.
Benjamin C. Williams *vs.* The United States.
James H. Purdy and wife *vs.* The United States.

That there be allowed and paid by the said several parties to said Evelith in full for his services and disbursements as *as* commissioner in said cases the sum of three thousand dollars, to be apportioned *pro rata* among the several claimants according to the
1065 amounts of their respective judgments, which are to be as follows:

In F. W. Boyd, executor	37,350 92
" B. R. Thomas and L. W. Mason	25,184 50
" Thomas Watts and wife	3,076 54
" Allen Jones	4,899 68
" Lizzie Hamilton, adm'x	7,064 66
" George Watt	21,307 94
" Oliver T. Morgan, tutor	11,964 35
" Simon Witkowski	45,578 50
" Oliver T. Morgan, executor	21,870 68
" Catharine Carson, executrix	843 00
" James H. and Louisa Purdy, adm'rs	42,513 48

And it is further ordered that judgment for the said several parties

shall be entered for the respective amounts above specified when it shall appear to the Court, by their producing his receipts, that the said parties have respectively paid to said Eveleth their several rateable shares of the said sum of three thousand dollars on the basis aforesaid.

And it is further ordered that of the said sum of three thousand dollars the said Eveleth shall be entitled to retain for his services as commissioner two thousand dollars, and that the remainder be paid by him to Enoch Totton, Esq., for his professional services in aiding said Eveleth in and about his said report upon said Totten's giving said Eveleth a receipt in full for said services.

And it is further ordered that in the cases of Josiah Win-
1066 chester *vs.* The United States and Helen C. Key *vs.* The United States, respectively, the entry of judgment may, at the election of the claimants, remain suspended to the end that, if they may be able hereafter to trace their captured property to any other fund than that now disposed of, they may then apply for a rehearing.

And it is further ordered that the amended report of the commissioner, together with the tabellated statement therein referred to and so much of the accompanying exhibits as any party interested may deem material, be adopted by the Court as its findings of facts in the above cases and each of them.

(Endorsed:) No-. 3461 and 3547 and other causes. Filed May 15th, 1874. J. R.

1067 *Petition.*

United States Court of Claims.

Rev. F. W. Boyd, Ex. of James Railey's Estate,
vs.
The United States.

To the honorable Court of Claims of the United States:

The petition of F. W. Boyd, (executor of the will of the late James Railey, deceased, of Carroll parish, La.), residing in Natchez, Adams county, Mississippi, showeth—

That the said Railey died prior to the outbreak of the late rebellion, leaving to his heirs-at-law two large plantations in Carroll parish, known as the "Raleigh" and "Carondelet" plantations, and in the month of April, 1863, your petitioner, as executor of said Railey's estate, had in his possession and stores on the plantations aforesaid upwards of nine hundred bales of cotton.

That during said month of April said cotton was seized and taken possession of by W. C. Wagley, O. N. Cutter, Hugh Mayer, and J. S. Wallace, under a contract with General McPherson for picking cotton abandoned in the field, and, under the direction of John G. Klink, chief Q. M. of 17th Army Corps, shipped the same to A. R. Eddy, A. Q. M., at Memphis, without the consent and against the protest of your petitioner.

1068 Your petitioner further shows that in July, 1863, one H. L. Davis gathered in the fields and ginned and baled on the "Raleigh" plantation aforesaid thirty-eight bales of cotton, and shipped the same per steamer "Hannibal" without the consent and against the will of your petitioner.

Your petitioner further shows that in Oct., 1863, one Lewis Dent shipped per steamer "Esmerald" seventeen bales of cotton from the "Raleigh" plantation without the consent and against the will of your petitioner.

Your petitioner further showeth, he is informed and believes that said cotton was all turned over to the agents of the Treasury Department, by whom subsequently one-half of said cotton was released in kind to the parties claiming under a contract — Gen'l McPherson, and the remaining half was sold and the proceeds paid into the Treasury of the United States, and all the lot of 38 bales shipped for account of H. L. Davis and all the lot of 17 bales shipped by Lewis Dent was sold and the proceeds paid into the Treasury of the United States.

Your petitioner avers that no part of said cotton or the proceeds thereof was appropriated in any way to the use of the Army or Navy of the United States, nor was it ever abandoned or forfeited or liable to seizure under any act of Congress in that behalf provided,

1069 and that it was not liable to seizure under the usage of war, and that no proceedings for the purpose of condemning said cotton have ever been instituted before any court or tribunal.

Your petitioner avers that he is unable to state the precise amount for which said cotton was sold or the expenses attending the seizure, shipment, transportation, and sale thereof, but the same was of the value of about one hundred dollars ($100) per bale, and would have netted in his hands the sum of ninety thousand and five hundred dollars ($90,500), and he believes that the said amount was received by the agents of the Treasury Department on the sale thereof and the same paid into the Treasury of the United States.

Your petitioner further avers that, the property aforesaid having been taken possession of by the United States Government and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor by paying all said cotton was reasonably worth at the time and place it was so taken from him as aforesaid, and he avers that said cotton was worth at the time of its seizure two hundred dollars ($200) per bale, which, under the implied contract aforesaid, he is entitled to receive from the United States.

Your petitioner further shows that if there has been a lawful and valid capture of said cotton, which he denies, but which

1070 he understands is asserted by the United States, then he is nevertheless entitled to receive the net proceeds thereof, amounting as aforesaid to the sum first above mentioned of ninety thousand and five hundred dollars ($90,500) under the provisions of an act of Congress entitled "An act to provide for the collections of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

And your petitioner further avers and shows that he has never, in any manner, encouraged and abetted or given aid or comfort to the rebellion or to the enemies of the Government of the United States, but, on the contrary, has always borne true allegiance and faithful support to said Government.

(Signed) F. W. BOYD, *Executor*,
By B. D. WHITNEY,
His Attorney-in-Fact.

Benjamin D. Whitney, of Washington city, D. C., above-named attorney-in-fact for the said F. W. Boyd, ex., being duly sworn, deposes and says that said F. W. Boyd, ex., is the claimant named in the foregoing petition of said claim or any part thereof or interest therein; that no assignment or transfer has been made; that the said F. W. Boyd is justly entitled to the amount as above claimed from the United States, after allowing all just credits and offsets, and that the facts stated in the foregoing petition are true, according to the best of his knowledge, information, and belief.

(Signed) BENJ. D. WHITNEY.

1071 C. CUSHING,
Petitioner's Counsel, Washington, D. C.

Subscribed and sworn before me, the undersigned, this 13th day of August, 1868.

EDW. F. BROWN,
Commissioner of the Court of Claims.

Endorsed: Petition. 3461. F. W. Boyd *vs.* The United States. Filed Aug. 19, 1868. Cushing, att'y.

U. S. Court of Claims.

FREDERICK W. BOYD, Executor of Estate of James Railey, Dec'd,
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

The petition of Frederick W. Boyd, executor of the estate of James Railey, deceased, respectfully shows that he is a resident of Natchez, State of Mississippi, and that on the twenty-eighth day of September, 1865, he was duly appointed executor of the last will and testa-
1072 ment of James Railey, deceased, late of the parish of Carroll, State of Louisiana, having given bond and taken the oath required by law, and is still the executor of said estate; that the said James Railey, in his lifetime, was the owner of plantations called "Raleigh" and "Carondelet," in said Carroll parish, in which had been raised by the owners and laboring in simply of the *the* said Railey, in the year 1862, a quantity of cotton, corn, &c., amounting, as he is — and believes, to about two hundred bales of cotton, ginned and baled in good condition, and over six hundred acres of unpicked cotton, which should have averaged one and one-half

bales to the acre, say 900 bales; five hundred acres of corn, averaging seventy-five bushels per acre; four thousand bushels sweet potatoes, already gathered and banked up; also about one thousand tons fodder, worth twenty dollars per ton; and over two hundred tons of cotton seeds; that said cotton, as far as was baled, was numbered consecutively from No. 1 to 200, or as many as the crop would justify, and said bales were marked, as they came from the press, Raleigh.

Petitioner further represents that about the latter part of the year 1862, or early in 1863, the *previous* date being unknown to petitioner, the said cotton was taken and carried from said plantation to the river bank at Goodrich's landing, a point about two miles distant; that two or more wagons, drawn by six or eight mules each, were three days engaged in hauling said cotton; that the cotton
1073 was taken in this way by officers and soldiers of the United States Army, acting, as he is informed, under orders of an officer named Harris; that said cotton was shipped from said landing to a point now unknown to petitioner.

Petitioner further represents that he is informed and believes that in the spring of the year 1863 Messrs. Wagely and Co. had contracts with the authorities of the Government in virtue of which they gathered and collected large quantities of cotton in said parish of Carroll, State of Louisiana, and that while being so engaged they gathered and took from the said plantation and another plantation named Carondelet, belonging to said Railey, large quantities of cotton, the amount of which is unknown to petitioner. Petitioner represents that he is not at present advised of the disposition made of any of the cotton so taken from either of said plantations further than as stated in this petition, but he presumes and believes that the same was transported to market, and that it has been sold and the proceeds accounted for to the proper department as the proceeds of sales of captured or abandoned property, as required by the provisions of the act of March 12, 1863, and other acts relative to property seized and taken as aforesaid; that of the corn, potatoes, fodder, &c., large quantities were taken away for the use of the troops in camp adjoining. Petitioner further represents that he has at
1074 all times borne true allegiance to the Government of the United States; that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said Government; that he knows the said James Railey, who died in 1860, during his lifetime bore true allegiance to the Government of the United States, and did not in any way voluntarily aid, abet, or give encouragement to the rebellion against said Government.

Wherefore petitioner prays that the court will take jurisdiction of his case and that the amount due may be decreed to be paid.

(Signed) F. W. BOYD, *Ex'r.*

R. J. ATKINSON,
C. CUSHING,
Counsel for Petitioner.

STATE OF ILLINOIS, } ss:
Knox County, }

Frederick W. Boyd, being sworn, says that no assignment or transfer of said claim or any part thereof or any interest therein has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

(Signed) F. W. BOYD.

WM. HESTER.
C. L. HANNAMAN.

1075 Sworn and subscribed before me and given my hand and seal of office this 11th day of August, 1868.

[SEAL.] (Signed) JAMES J. EGAN, *Co. Clerk.*

The post-office address of F. W. Boyd is, temporarily, Galesburg, Knox Co., Illinois; permanent, P. O., Natchez, Mississippi. R. J. Atkinson, Washington, D. C. C. Cushing, Washington, D. C.

Endorsed: Frederick W. Boyd, ex'r of estate of James Railey, dec'd, *vs.* The United States. Petition. Filed Aug. 19, 1868. R. J. Atkinson, C. Cushing, attorneys, Washington, D. C.

1076 At a Court of Claims held at Washington May 18th, 1874 (see journal 4, page 173), the following entry appears, viz:

FREDERICK W. BOYD, Executor of James Railey, Deceased,
vs.
THE UNITED STATES. } 3461 and 3547.

The Chief Justice announced the decision of the Court and judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Frederick W. Boyd, executor of James Railey, deceased, do have and recover of and from the United States the net proceeds of 347 bales of cotton, amounting to the sum of thirty-seven thousand and three hundred and fifty dollars and ninety-two cents ($37,350.92). The Court filed findings of fact.

1077 STATE OF MISS., *Adams County:*

OAKLAND, *Feb.* 1*st*, 1860.

I, James Railey, of the county and State before mentioned, being of sound mind and disposing memory, do make, publish, and declare this instrument of writing to be my last will and testament in olegraphic form; desire all courts having jurisdiction over wills in Mississippi, Louisiana, and Arkansas will not in any way interfere in its full execution according to its letters, without any regard to forms of law or technicalities, to wit:

At my death I give to my wife, Matilda S. Railey, all the estate I may own, of every kind, in the State of Mississippi, and give all in fee simple except my slaves, Augusta and Sarah, and their children, which said slaves and further increase of Augusta and Sarah I give to my said wife during her natural life, and then the slaves, with their future increase, I give to my brother, Logan Railey, of Ky., knowing he will treat them with kindness and give them all the comfort they require and lenity from hard work they may merit.

It is my will that all my property in Louisiana and Arkansas *to* be kept together as I may leave it until all my just debts are paid, and desire that my friend, James G. Carson, of Carroll parish,
1078 Louisiana, take the two plantations of Raleigh and Carondelet under his management, and that my friend, James Carson, Jr., of Natchez, take my Deerfield plantation in Ark. under his supervision until my debts are paid, and he, the said James Carson, is requested hereby to make a charge for his services and his charge not to be questioned, but paid out of the proceeds of the crop.

After all my debts are paid, together with any legacies I may make, I wish my friends, James G. and James G. Carson, Jr., to divide as equally as possible my Raleigh and Carondelet plantations, giving my Raleigh to my daughter, Mary E. R. Boyd, with all the negroes and stock, &c., and to my son, H. Otey Railey, Carondelet, with negroes, stock, &c., and should my grandson, Ernest H. Railey, survive to grow to the age of twenty-one years my friends above named, James G. Carson and James Carson, Jr., will give him possession of the Arkansas plantation called Deerfield, but should my grandson not survive to the age of twenty-one years, then the Ark. place called Deerfield is to be sold in block, or otherwise, as may be thought best to the interest of my estate.

It is humiliating to me to say what course I wish taken in regard to my son, Charlie Randolph Railey. I desire my friend, James G. Carson, to pay to Charlie the sum of one thousand dollars per
1079 annum in quarterly payments, and give as a justification on my part for so doing and give to the courts a- full evidence of the necessity of this course the following statement:

Charlie was tried for murder and confessed the act, and nothing but the proof as was given by his school-teacher and Dr. Metcalf, my friend and physician, that Charlie had not mind enough to be responsible for his act saved him from the penalties of the law.

Under this state of things I felt it my duty not to place property or funds (only for his support) in his possession; the annuity to be paid to Charlie will be retained, one-third from each own *detect*, Raleigh and Deerfield, and should events occur to make the amount annually greater my friend, James G. Carson, is hereby authorized to — all — necessary in the matter.

I forgive M. E. R. Boyd all the accounts I have charged to her.

After all my just debts are paid I give to my neice, Belle Railey, and to my neice, Cornelia Railey, both daughters of Logan Railey, of Ky., each the sum of five thousand dollars.

Signed the day and date above written, at Oakland.

(Signed) JAMES RAILEY.

1080 NOTE.—There are many slaves secured to Mrs. Railey by wills, deeds, &c., and some have intermarried with some of my own.

Mrs. R. and myself have exchanged many and she may continue to do so at pleasure, excepting Sarah and Augusta and children. See list of exchange on my old tax book, made out by E. Stanton and signed by Mrs. M. S. R. and J. R. in Mr. Houston's presence as witness.

THE STATE OF MISSISSIPPI, *Adams County:*

In the Probate Court of said County, at the September Term, A. D. 1860.

In the matter of a certain instrument of writing purporting to be the last will and testament of James Railey, deceased.

Personally appeared, in open court, at the above-stated times, S. Dryden Stockman, Audley C. Britton, and James N. Stockman, who, having first been duly sworn, severally deposed and said that they were well acquainted with the handwriting of James Railey, late of said county, deceased, having often seen him write and sign his name, and that the whole of the foregoing instrument of writing, as well as the signature thereto, purporting to be the last will and testament of said James Railey, is in the proper handwriting of the said James Railey, and that on the 1st day of February, 1860,
1081 the day of the date of the said instrument, the said James Railey was twenty-one years and upwards of age and of sound and disposing mind.

(Signed) S. D. STOCKMAN.
A. C. BRITTON.
JAS. N. STOCKMAN.

Sworn to and subscribed, in open court, September 26, A. D. 1860.
(Signed) RICHARD A. INGE, *Clerk.*

A certain instrument of writing, purporting to be the last will and testament of James Railey, deceased, was brought into court, proven by the testimony of S. Dryden Stockman, Audley C. Britton, and James N. Stockman to be wholly in the handwriting of said James Railey, and ordered to be recorded as his last will and testament.

THE STATE OF MISSISSIPPI, *Adams County,* } *ss:*

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify that the foregoing pages contain a true and perfect copy of the original last will and testament and the proof thereof of James Railey, deceased, and the order of the court made thereupon as the same remain on file and of record in my office. In testimony whereof I have hereunto set my hand and seal of said court, at Natchez, the 19th day of October, A. D. 1860.

(Signed) RICHARD A. INGE, *Clerk.*

1082 THE STATE OF MISSISSIPPI, } ss:
Adams County, }

I, Reuben Bullock, judge of the probate court (sole and presiding) of said county and State, do hereby certify that Richard A. Inge, whose genuine signature appears to the foregoing certificate and attestation, is and was at the date thereof clerk of said court, duly elected and qualified and commissioned; that his said certificate and attestation are in due form of law, and that all of his acts in the premises are and ought to be entitled to full faith and credit in *jurisdicture* and thereunto.

Given under my hand and seal this 19th day of October, A. D. 1860.

(Signed) R. BULLOCK, *Judge.* [SEAL.]

I, R. K. Anderson, clerk of the courts of the parish of Carroll, State of La., do hereby certify that the foregoing pages to be a true and correct copy of the last will and *probate* of James Railey as now on file in my office.

In testimony whereof I have set my hand and seal of said court, at Providence, December 9th, A. D. 1872.

[SEAL.] (Signed) R. K. ANDERSON, *Clerk.*

1083 STATE OF LOUISIANA, *Parish of Carroll:*

Probate Court.

I, Chas. A. De France, judge of the probate court in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, do hereby certify that Rob't K. Anderson, whose genuine signature appears on the foregoing certificate, is and was at the time of signing the same the clerk of the parish and probate courts in and for the parish of Carroll, La., duly commissioned and qualified, and that all his acts as such are entitled to full faith and credit, and that his said certificate is in due form.

Given under my hand officially this the 10th day of December, A. D. 1872.

[SEAL.] (Signed) C. A. DE FRANCE,
Judge Parish and Probate Courts.

1084 STATE OF LOUISIANA, *Parish of Carroll:*

Probate Court.

Probate clerk of said court in and for said parish and State, duly commissioned and sworn, do hereby certify that C. A. De France, whose genuine signature appears to the foregoing certificate, is and was at the time of signing the same judge (sole and presiding) of the probate court in and for said parish and State, duly commissioned and qualified, and that all his acts as such are entitled to full faith and credit.

Given under my hand and seal of office this the 10th day of December, A. D. 1872.

[SEAL.] (Signed) R. K. ANDERSON,
Clerk of Parish Court.

Oath of F. W. Boyd, Dative Testamentary Executor.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

* * * * * * *

I, Frederick W. Boyd, do solemnly swear that I will faithfully and impartially perform and discharge all the duties incumbent on me as dative testamentary executor of the last will and testament of the late James Railey to the best of my ability and understanding, "so help me God."

1085 (Signed) F. W. BOYD.

Sworn and subscribed before me this 28th of Sept., A. D. 1865.

(Signed) J. L. CHEATHAM, *Clerk.*

Bond of Executor.

Know all men by these presents that we, Frederick Boyd, as principal, a resident of the parish of Carroll, State of Louisiana, and Wm. M. Deeson, a resident of said parish and State, as surety, are held and firmly bound unto Edgar D. Farrar, judge of the thirteenth judicial district court in and for the parish of Carroll, Louisiana, in the sum of thirty thousand ($30,000) dollars; for the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents this 28th of September, A. D. 1865.

The condition of the above obligation is that whereas the above-bound Frederick W. Boyd has this day been appointed by said court as dative testamentary executor upon the succession of the late James Railey, of said parish, now, if the said Boyd shall well and truly administer the property, rights, and credits of said succession as the law directs and render a true and correct account thereof in the time and manner pointed out by the statute of the State, or when-
1086 ever hereunto legally required thereto, and the said account shall be duly approved and homologated by said court, then the above obligation to be null and void, and otherwise to remain in full force and effect.

(Signed) F. W. BOYD.
W. M. DEFSON.

Letters of Tes'ty.

THE STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

Be it known and remembered that whereas the Rev. Frederick W. Boyd has been appointed dative testamentary executor of the last will and testament of the late James Railey, and having taken the oath required by law and given bond with solvent security he is therefore fully authorized and empowered to perform and discharge all the duties of said appointment.

Given under my hand and seal of office the 28th day of Sept., A. D. 1865.

[L. S.] (Signed) J. L. CHEATHAM, *Clerk.*

1087 THE STATE OF LOUISIANA, *Parish of Carroll:*

I, Rob't K. Anderson, clerk of the district and parish courts, in and for said parish and State, the said parish court being also the probate court, do herby certify that the foregoing pages contain a true and correct copy of the oath, bond, — letters testatamentary of Frederick W. Boyd, dative testamentary executor of the succession of James Railey, dec'd.

Given under my hand and official seal this Dec. 17th, 1872.

[SEAL.] (Signed) R. K. ANDERSON,
Clerk 13th District Court and Parish Court, Carroll Parish, La.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish and Probate Court.

I, Charles A. De France, judge of the parish and probate court in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, do hereby certify that Rob't K. Anderson, whose genuine signature appears onto the foregoing certificate, is and was at the time of signing the same the clerk of the district and parish court in and for the parish of Carroll, L ., the parish being also the probate court, duly commissioned and qualified, and that all his acts as such are entitled to full faith and credit, and that his said
1088 certificate is in due form.

Given under my hand officially the 17th day of December, A. D. 1872.

(Signed) C. A. DE FRANCE,
Judge Parish and Probate Court.

STATE OF LOUISIANA, *Parish of Carroll:*

Parish and Probate Court.

I, Rob't K. Anderson, clerk of the said court in and for said parish and State, duly commissioned and sworn, do hereby certify that Chas. A. De France, whose genuine signature appears to the foregoing certificate, is and was at the time of signing the same judge (sole and presiding) of the parish and probate court in and for said parish and State, duly commissioned and qualified, and that all his acts as such are entitled to full faith and credit.

Given under my hand and seal of office this the 17th day of December, A. D. 1872.

[SEAL.] (Signed) R. K. ANDERSON,
Clerk Parish and Probate Court.

1089 F. W. BOYD, Executor, *vs.* THE UNITED STATES.

I hereby certify that the foregoing 35 pages are true copies of original papers in the above-entitled cause now on file in the clerk's office of the Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of the court this 11th day of July, 1882.

[SEAL.] (Signed) ARCHIBALD HOPKINS,
Ch. Clerk Court of Claims.

I, Charles D. Drake, Chief Justice of the Court of Claims, certify that the foregoing attestation of Archibald Hopkins, chief clerk of said court, is in due form.

(Signed) C. D. DRAKE.

1090 No. "25." Referred to and made part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed February 27th, 1883.

Record of Proceedings of F. W. Boyd in U. S. Court of Claims. Copy of Treasury Draft, etc.

1091 TREASURY DEPARTMENT.

To the Treasurer of the United States, Greeting:

Pay to Frederick W. Boyd, executor.

Bartley and Casey, att'ys of record.

Settlement warrant No. 1571.

Treasurer will please retain draft till further advised or order to be charged to the appropriations named in the margin thirty-seven thousand three hundred and fifty dollars and ninety-two cents.

Due James Railey, dec'd, on settlement pursuant to a certificate of the First Comptroller, No. 193,686, dated the 24 day of August, 1874, recorder by the Register. For so doing this shall be your warrant.

Given under my hand and the seal of the Treasury Department this 27 day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of Independence the ninety-ninth.

$37,350.92.
Appropriations.
Special.
C. F. C.,
Ass't Sec'y.

[SEAL.] CHAS. F. CONANT,
Assistant Secretary.

Return of proceeds of C. and A. property, 37,350.92.

R. and E. 27.

Countersigned:

WM. HEMPHILL JONES,
Acting First Comptroller.

1092 Registered Aug. 27.

R. A. GRAHAM, *Register.*

OFFICE OF THE TREASURER OF THE UNITED STATES.

Received for this warrant the following draft: No. 4502 on New York; No. — on —.

F. W. BOYD.

Endorsed (on Treas. draft): F. W. Boyd, executor of James Railey, dec'd. F. W. Boyd. Signature of F. W. Boyd made in my presence and correct. (Signed) G. F. Baker.

Draft No. A 4502 *on Treasury Warrant No.* 1571.

$37,350.92. TREASURY OF THE UNITED STATES,
WASHINGTON, D. C., *Aug.* 27, 1874.

Pay to the order of Frederick W. Boyd, executor, thirty-seven thousand three hundred and fifty $\frac{92}{100}$ dollars.

(Signed) L. R. TUTTLE,
Ass't Treasurer of the United States.

No. —. Registered Aug. 27, 1874. $—.

JOHN ALLISON,
Register of the Treasury.

To ass't treasurer U. S., New York.

1093 Office of Bartley and Casey, attorneys-at-law, May building, N. E. corner of 7th and E streets.

T. W. Bartley; residence, 216 I St. Joseph Casey; residence, 921 G St.

WASHINGTON, D. C., *Aug.* 27, 1874.

To the hon. the Secretary of the Treasury.

SIR: The undersigned, as the attorneys of record in the case of Fred'k W. Boyd, executor, &c., *vs.* The United States, in the United States Court of Claims, for the proceeds of and abandoned cotton, in which judgment has been recovered in favor of claimant and on which a warrant on the Treasury has duly issued, &c., do hereby waive the receipt and delivery to them of the draft on said warrant in said case.

With great respect, &c.,

(Signed) BARTLEY AND CASEY.

(Endorsement:) The attorneys of record having waived their right to receive the warrant named within, let it be delivered to the original claimant in person. August 28th, 1874. (Signed) B. H. Bristow, Secretary.

Offered in evidence on the part of defendant.
Filed Feb'y 27th, 1883.

(Signed) J. B. BEATTIE,
Special Ex'm'r.

[Endorsed:] No. 1. U. S. C. C. Boyd *vs.* Wyley *et als.* Offered in evidence on the part of def't. Filed Feb'y 27th, 1883. J. B. Beattie, special ex'm'r. No. 25.

1094 No. "26." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainant.

Endorsed: Abstract of assessments for the years 1870 and 1882.

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I, F. H. G. Taylor, deputy clerk of the 8th district court and *ex*

officio deputy recorder in and for said parish and State, duly appointed and qualified, do hereby certify that I have examined the assessment rolls of property for the years 1870 and 1882 on file in this office, and that the following is a correct and true abstract taken from said rolls of the names of persons or owners and properties thereon and the valuations thereof as the same appear on said rolls:

Assessment of 1870.

W. G. Wyley.

Corbin tract of land:

Situated in township- 20 and 21, range- 10 and 11, 1,747.87 acres, all uncultivated; assessed at $4,200.00.

Railey tract:

Township and range not given. Described on roll as fol-
1095 lows: 16 miles below town of Providence; bounded in front by Mississippi river, in rear by lands of I. B. Beard, on left and above by lands of T. M. Lilley or Salem plantation, on lower side by lands of succession of Jonathan Morgan, 1,680 acres, 1,180 uncultivated, 400 acres cultivated in cotton, 100 acres cultivated in corn; assessed at $33,600.00.

Bass tract:

Township and range not given. Described on roll as follows: Bounded N. by lands of W. M. Deeson, E. by Mississippi river, S. by lands of Abram Bass, W. by lands of Wallace Keene, 1,400 acres, 1,300 uncultivated, 75 cultivated in cotton, 25 cultivated in corn; assessed at $11,200.00.

Walker tract:

Situated in township- 19 and 20, range- 9 and 10, 320 acres, all uncultivated; assessed at $320.00.

Shewalter tract:

Township and range not given. Described on roll as follows: Bounded N. by Cypress bayou, E. by A. M. Waddill lands, S. by W. E. Harold, W. by Bayou Macon, 1,080 acres, all uncultivated; assessed at $3,240.00.

1096 Cawthorn tract:

Situated in township 20, range 10, 200 acres, all uncultivated; assessed at $200.00.

Farmer tract:

Situated in township 21, range 11, 640 acres, all uncultivated; assessed at $1,280.00.

Holland tract:

Situated in township 19, range 11, 160 acres, all uncultivated; assessed at $320.00.

Richardson tract:

Situated in townships 18 and 19, range 10, 572 acres, all uncultivated; assessed at $1,144.00.

Smith tract:

Situated in township 18, range 11, 425 acres, all uncultivated; assessed at $850.00.

Carson tract:

Situated in township 19, range 11, 805.25 acres, all uncultivated; assessed at $2,000.00.

James McNeil tract:

Situated in township 19, range 11, 990.17 acres, all uncultivated; assessed at $1,980.00.

Graves tract:

Situated in township 20, range 10, 320 acres, all uncultivated; assessed at $970.00.

1097 Jackson tract:

Situated in township 19, range 11, 440 acres, all uncultivated; assessed at $880.00.

Taylor tract:

Township and range not given. Described on the roll as follows: A certain tract of land lying on Joe's bayou, bounded N. by lands formerly owned by Motley and Graves, on S. by Carson plantation, E. by W. T. E. Anderson's land, W. by place known as Frontman plantation, 650 acres, all uncultivated; assessed at $1,300.00.

McCain tract:

Situated in township 19, range 10, 160 acres, all uncultivated; assessed at $540.00.

Also the following lands:

S. E. ¼ sec. 34 and S. W. ¼ sec. 35, T. 20, R. 11; lot 5 and S. ½ of S. W. fract'l ¼ and N. E. ¼ of S. W. fract'l ¼ and S. E. ¼ and lots 1, 2, 3, and 4 sec. 2, T. 19, R. 11; E. ½ of N. E. ¼ sec. 3, T. 19, R. 11; lot 4 sec. 1, T. 19, R. 11; lots 25 and 26 and W. ½ of N. W. ¼ sec. 12, T. 19, R. 11; S. ½ of S. W. ¼ and E. ½ of S. E. ¼, known as Berry tract, sec. 11, T. 19, R. 11; T. 19, R. 11; sec. 16, T. 20, R. 11; lots 1, 2, 3, 7, and 8 sec. 22, S. E. ¼ of N. E. ¼ and lots 4 and 5 sec. 22, T. 20, R. 11; N. E. ¼ of N. W.
1098 ¼ and S. E. ¼ of S. E. ¼, N. W. ¼ of N. W. ¼, known as Force place, sec. 22, T. 20, R. 11, 560 acres; S. E. ¼ and W. ½ S. E. ¼ sec. 26, N. E. ¼ sec. 35, and N. W. ¼ of S. W. ¼ sec. 36, T. 20, R. 11, containing in all 3,774 acres, all uncultivated and assessed at $6,348.00.

James G. Wyley.

Templeton place:

Situated in township 19, ranges 10 and 11, containing 1,565.67 acres, 1,440.67 uncultivated, 75 cultivated in cotton, and 50 in corn; assessed at $5,000.00.

G. Malin Davis.

Carondelet place:

Situated in sections 48 and 49, 56, 57, and 58, township 19, range 13, containing 1,250 acres, 550 uncultivated, 500 cultivated in cotton, and 200 in corn; assessed at $32,000.00.

Assessments of 1882.

W. G. Wyley.

Raleigh place:

Bounded on the front by the Mississippi river, rear by lands
1099 of Mrs. C. M. Beard, above by Salem, and below by George Foster; also E. ½ of S. E. ¼ of sec. 52 and N. ½ of N. W. ¼ sec. 55, T. 19, R. 13, containing 1,600 acres; assessed at $18,275.00.

Carson tract:

Situated on Joe's bayou, bounded above by lands formerly owned by W. T. C. Anderson, below by the Frontman, and in the rear by Tensas swamp, 830 acres; assessed at $800.00.

Kent tract:

Lot 7 and that part of lot 8 lying west of Monticello bayou in sec. 26, T. 19, R. 10, and E. ½ of N. E. ¼ sec. 6, T. 18, R. 11, 80 acres; assessed at $100.00.

McKee tract:

The undivided ½ interest in the McKee tract, situated on Bayou Macon, 550 acres; assessed at $500.00.

Mary Wilson tract:

N. E. ¼ sec. 30 and 10 acres adjoining thereto west of Monticello bayou, T. 19, R. 10, 170 acres; assessed at $150.00.

Prentiss place:

1100 Situated on Bayou Macon, bounded above by Van Ranselar place, E. by Frontman place, S. by Drew place, 450 acres; assessed at $500.00.

Bass place:

Bounded on the N., Deesona, E. by the Mississippi river, S. by Blue Ridge, and W. by Wagaway; also the W. ½ of the W. ½ of sec. 71, 986.19 acres; assessed at $12,500.00.

Jackson tract:

All in towns'p 19, range 11, 471 acres; assessed at $475.00.

McNeil tract:

All in township 19, range 11, 990 acres; assessed at $1,000.00.

Reynold's tract:

Bounded on E. by Tensas bayou, S. by Monticello road, and W. and N. by Graves' place, 480 acres; assessed at $500.00.

Holland tract:

S. E. ¼ and S. W. ¼ sec. 4, T. 19, R. 11, 308 acres; assessed at $300.00.

Taylor tract:

The undivided ½ of a certain tract of land on Joe's bayou, bounded on N. by lands formerly owned by Motley and Graves. W. by Frontman, S. by the Carson place, and E. by the W. T, C. Anderson place, 320 acres; assessed at $320.00.

1101 Smith tract:

All in township 18, range 11 east, 425 acres; assessed at $425.00.

Shewalter tract:

Bounded N. by Cypress bayou and McKee place, E. by A. M. Waddill lands, S. by W. E. Harold's, and W. by Bayou Macon, 1,080 acres; assessed at $1,000.00.

Also the following tracts:

The Vinson tract; the Berry tract; the Tompkins tract; the Forth tract, all lying or situated in townships 19 and 20, range 11 E., containing altogether 3,508 acres and assessed altogether at $3,500.00.

J. W. Montgomery.

Deesona place:

Lots 26 and 27, S. ½ of N. E. ¼ of lot No. 25, T. 21, R. 132; N. ½ of S. E. ¼ of N. E. ¼ sec. 63, T. 21, R. 11, 885 acres; assessed at $10,000.00.

Thompson tract:

W. ½ sec. 11, T. 19, R. 11 E., 320 acres; assessed at $350.00.

Moore tract:

All situated in townships 18 and 19, range 11 east, 1,076 acres; assessed at $1,000.00.

1102 Anderson tract:

Situated on Joe's bayou and all in township 19, range 11 E., 476 acres; assessed at $500.00.

Carondelet:

Bounded on the N. by lands of Wm. Craig and Mrs. C. M. Beard, E. by Wm. Craig and Henderson and Denson places, S. by Henderson, Denson, and Aiken places, and W. by Georges, Foster's lands, 1,157 acres; assessed at $14,000.00.

Richardson tract:

½ interest in the N. W. ¼ sec. 26, lots 3 and 4 and S. W. ¼ sec. 29, lots 5 and 6 in S. W. ¼ sec. 26, N. W. ¼ sec. 35, T. 19, R. 10, 189 acres; assessed at $200.00.

Jefferson Ridge:

An undivided interest in sec. 46 and ½ sec. 48, N. E. ¼ sec. 47 and S. W. ¼ sec. 45, 1,040 acres; assessed at $1,100.00.

Woodstock:

200 acres adjoining Hollybrook, outside of levee; assessed at $50.00.

McNeil tract:

An undivided ½ of McNeil tract on Joe's bayou, T. 19, R. 11 E., 492 acres; assessed at $500.00.

1103 I hereby certify that the foregoing eight (8) pages contain a true and correct abstract of assessments taken from the assessment rolls of the years 1870 and 1882 now on file in this office. Witness my hand and the seal of the recorder in and for the parish of East Carroll, La., this the 20th day of April, A. D. 1883.

[SEAL.] F. H. G. TAYLOR,
Deputy Recorder.

1104 No. "27." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed April 21st, 1883.

(Endorsed:) Deed and mortgage. Rob't Wilford to Susan A. Cunningham.

STATE OF LOUISIANA, *Parish of East Carroll:*

Be it known that, for the price and consideration hereinafter set out, I, Rob't Wilford, do hereby bargain, sell, and deliver unto Mrs. Susan Cunningham, here present and accepting, with full warranty of title and subrogation to all my rights and actions against my vendor growing out of or connected with my purchase, the following property situated in this parish, to wit: That tract of land late the residence of and belonging to Andrew Cunningham, now deceased, being lots 47, 48, 49, and 50, and 22 acres of the front part of lot 46 and a part of the east half of fractional lot 73, lying back of lots 19, 50, and 51, and containing 334 acres, bounded in front by the Mississippi river and otherwise by lands of William Benjamin and lands known as the Bank place, and on the rear by lands known as "Holly Brook place" and by lands of W. B. Keene, being the same property that was adjudicated and delivered to me at a suc-

1105 cession sale of the property of Andrew Cunningham on the 25th July, 1882, reference being now made to said act of adjudication for certainty, now on file in the court in this parish and the 8th district. The price and consideration of this sale is forty-two hundred and fifty-nine $\frac{44}{100}$ dollars, whereof the purchaser has paid me one thousand nine hundred and ten dollars cash in hand, and

for the balance she has delivered to me, the vendor, her two promissory notes of even date herewith, each payable to my order, for eleven hundred and seventy-four $\frac{82}{100}$ dollars, and due, respectively, in one and two years, with 8% per annum interest from date.

And the said purchaser declares that in order to secure the payment of said notes she hereby specially mortgages said property unto me, said Robert Wilford, and agrees not to alienate or encumber said property to my prejudice.

Thus done and signed this (30th) thirtieth day of November, 1882, in presence of the undersigned witnesses.

(Signed) ROBERT WILFORD.
(Sig'd) SUSAN A. CUNNINGHAM.

Attest: J. W. MONTGOMERY.
JOHN H. STEVENS.

J. W. Montgomery, one of the subscribing witnesses to this deed and mortgage, being duly sworn, deposes and says that he saw the parties thereto sign their names thereto, on the day therein mentioned, for the purposes therein mentioned.

(Sig'd) J. W. MONTGOMERY.

Sworn to and subscribed before me this the 5th day of April, A. D. 1883.

(Sig'd) F. H. G. TAYLOR,
D'y Recorder.

1106 STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the foregoing is a true and correct copy of the original deed and mortgage duly recorded in this office April 5th, 1883, in Notarial Book "Q," folio 496, and in Mortgage Book "V," folio 155.

Given under my hand and the seal of said office this the 21st day of April, A. D. 1883.

[SEAL.] (Sig'd) F. H. G. TAYLOR,
Deputy Recorder.

No. "28." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed April 21st, 1883.

(Endorsed:) Deed. P. H. Hanna to F. M. Taylor. 1870.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known and remembered that before me, David L. Morgan, a deputy recorder, duly appointed and sworn, in and for the parish of Carroll, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and
1107 appeared Perry H. Hanna, a resident of the parish of Carroll, State of Louisiana, who declared unto me, deputy recorder,

that, acting in his capacity as administrator of the estate of the late James Galloway, deceased, he did, after due legal advertisement in a newspaper named the "Elton Eagle," published in the said parish of Carroll, sell at public auction, on Wednesday, the 22d day of December, A. D. 1869, unto Frank M. Taylor, also a resident of said parish and State, he being the highest and last bidder, the following-described property belonging to the said succession of James Galloway, to wit: A certain tract of land, with all the improvements thereon, situated in the said parish, on the Mississippi river, known as the "Eddewood plantation," and bounded on the north by the Mississippi river, on the west by the lands of John Lynch, on the east by the property of Mrs. Savage, and on the south by the lands of J. M. Beard, containing three hundred acres, more or less; and now the said Perry H. Hanna, by virtue of the writ of sale and his authority of administration, hereby confirms the sale, hereinafter described as made unto the said F. M. Taylor, for the sum of seventeen hundred and fifty dollars, receipt whereof is hereby acknowledged and full acquittance granted therefor:

To have and to hold the same unto the said F. M. Taylor, to him, his heirs and assigns, for his and their own proper use, benefit, and behoof, forever.

1108 Thus done and signed in the presence of J. W. Boice and F. H. Pugh, lawful witnesses, who hereunto sign their names with the said parties and me, notary public, on this the 23rd day of December, A. D. 1869.

(Sig'd) P. H. HANNA.

(Sig'd) F. M. TAYLOR.

Attest: J. W. BOISE.
F. H. PUGH.

(Sig'd) DAVID L. MORGAN,
Deputy Recorder.

A true copy of the original act on file and duly recorded in the recorder's office of the parish of East Carroll, State of Louisiana, on the 3rd day of January, A. D. 1870, in Notarial Book "N," p. 322.

Witness my hand and official seal on this 21st day of April, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

No. "29." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed April 21st, 1883.

(Endorsed:) Deed. W. W. Collins, sheriff, to Nathaniel Houghton.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

JOHN W. SCARBOROUGH
vs.
HENRY GOODRICH. } No. 5222.

Be it known that by virtue of a writ of "*fiera facias*" 1109 issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to defendant, Henry Goodrich, to wit:

Lots No. 19 and 20, T. 19, R. 13 east, together with back concession or lots belonging to the same, being numbered as lots 1, 2, and 3 of section 17, T. 19, R. 13 east, bounded on the north side by lands belonging to succession of J. G. Carson and lands belonging to the succession of O. J. Morgan, & on the east by the Mississippi river, on the south by lands belonging to Lynch, Ruggles & Co., on the west and south by lands belonging to the succession of Ballard and Boyd, known as Out Post plantation, containing in all 350 acres, more or less, with all the improvements thereon or thereto belonging; also 80 acres situated on the road leading from Goodriche's landing to Monticello, bounded on the north by lands of the succession of O. H. Kellam and on the east by lands of the succession of T. Stevens, on the south by lands of A. W. and E. A. Green, and west by lands of the succession of Hugh Short, and better known as E. ½ of N. W. ¼ of section 27, T. 19, R. 13 east—

I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 21st day of March, A. D. 1868, seize the above-described property, notice of which seizure I gave Henry Goodrich, defendant, in writing, and on the 28th day of March, A. D. 1868, I advertised the said 1110 property for sale in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the 2nd day, of May, A. D. 1868, for cash, with the benefit of appraisement, and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Dr. Nathaniel Houghton became the purchaser thereof for the price and sum of three thousand five hundred and eighty-three $\frac{33}{100}$ dollars, that being ⅔ of the appraised value thereof, which amount he paid cash in hand, the receipt whereof is hereby acknowledged.

Now, in consideration of the premises and by virtue of the authority in me vested by the laws of the State of Louisiana, I do hereby sell and adjudicate to the said purchaser all the right, title, interest,

and claim which the said Henry Goodrich has or had in and to said property:

To have and to hold the same unto said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with —— —— and —— ——, witnesses of lawful age residing in said parish and State, this the 2nd day of May, A. D. 1868.

(Sig'd) W. W. COLLINS, *Sheriff*,
By J. W. DRAUGHON,
D'y Sheriff.

(Sig'd) N. HOUGHTON.

Attest: A. G. BELDEN.
R. J. LONDON.

1111 A true copy of the original act on file and duly recorded in this office in Notarial Book "N," folios 239 & 240, on the 20th day of July, A. D. 1869.

Witness my hand and official seal this the 21st day of April, A. D. 1883.

Providence, East Carroll parish, Louisiana.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

No. "30." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed April 21st, 1883.

(Endorsed:) Deed. Sheriff for H. G. Blackman to Mary B. Balfour.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

MARY B. BALFOUR
vs.
HORACE G. BLACKMAN. } No. 5269.

Be it know- that by virtue of a writ of *fiera facias* issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Horace G. Blackman, to wit: All that tract of land situated in Carroll parish known as the "Rescue plantation,"
1112 described by official survey as sec. No. 1 and E. ½ of sec. No. 2, T. 18, R. 12 E., containing 1,182 acres, more or less, together with 46 head of mules, 3 head of horses, 1 colt, 2 cows and calves, 6 wagons, 2,962 bushels of corn, 12 shovel plows, 20 blind-bridles, and 20 pair of mule gear—

I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 12th day of December, A. D. 1867, seize the above-described property, notice of which seizure I gave H. G. Blackman, the defendant, in

writing; and on the 28th day of December, A. D. 1867, I advertised said property for sale in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the Rescue plantation, in said parish and State, on the first Saturday, the 1st day, of February, A. D. 1868.

And on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Mrs. Mary B. Balfour became the purchaser thereof for the price and sum of eleven thousand seven hundred and $\frac{70}{100}$ dollars, she being the last and highest bidder.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, and claim which the said Horace G. Blackman has or
1113 had in and to said property:

To have and to hold the same to the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with James W. Draughon and Jno. S. Lefwitch, witnesses of lawful age, residing in said parish and State, this the 1st day of February, A. D. 1868.

(Sig'd) W. W. COLLINS, *Sheriff.*
(Sig'd) MARY B. BLACKMAN,
Assisted by her Husband, H. G. BLACKMAN.

Attest: J. W. DRAUGHON.
JNO. S. LEFTWITCH.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folios 253 and 254.

Given under my hand and seal of office this the 24th day of April, A. D. 1868.

(Sig'd) J. L. CHEATHAM, *Clerk,*
By R. J. LONDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify the above and foregoing to be a true copy of the original sheriff's deed recorded on the 2nd day of May, A. D. 1868, in this office, in Notarial Book "N," folio 84.

Given under my hand and official seal on this the 13th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1114 No. "31." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed April 21st, 1883.

(Endorsed:) Deed. Geo. A. Sheridan, sheriff, to F. M. Goodrich.

Fi. Fa.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

JOHN P. MATTHEWS } No. 4834.
vs.
JAMES M. BERRY. }

Know all men by these presents that by virtue of a writ of *fiera facias* issued in the above-styled suit and to me directed, commanding me to seize and sell the following-described property, to wit: A tract of land described by official survey as lots 1, 2, 3, 5, & 7 of section 55, and lots 7 and 8, section 56, and lot 8 of section 60, & lots 1, 2, 3, 5, & 7 of section 61, all in T. 21 N., of range 12 east, situated in the parish of Carroll, Louisiana, in the district of lands north of Red river, containing eleven hundred and ninety-one $\frac{33}{100}$ acres, I, Geo. A. Sheridan, sheriff of the parish of Carroll, La., did on the 19th day of October, A. D. 1868, seize the foregoing-described property, notice of which seizure was waived in writing by the said James M. Berry, defendant in the above-styled suit, and on the 31st day of the same month & year I advertised said property for sale in the "Elton Eagle," the official paper of said parish and State,
1115 to be sold on the 1st Saturday, the 5th day, of December, A. D. 1868, for cash, with the benefit of appraisement, to be sold at the door of the court-house, in the town of Floyd, in said parish and State, and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, and having said property duly appraised, I offered said property for sale in an audible voice at public auction; whereupon Ferdinand M. Goodrich became the purchaser for the price and sum of nine hundred and eighty-two $\frac{50}{100}$ dollars, that being $\frac{2}{3}$ of the appraised value of said land, which amount he paid cash in hand, the receipt of which is hereby acknowledged.

Now, therefore, in consideration of the premises and by virtue of the law of the State of Louisiana, I do by these presents transfer and adjudicate unto the said Ferdinand M. Goodrich all the right, title, interest, and claim of the said James M. Berry in and to the foregoing-described property; to have and to hold the same unto the said Ferdinand M. Goodrich and his heirs and assigns for his and their own proper use, benefit, and behoof forever.

Done and passed at my office, in the town of Floyd, in said parish and State, this the 5th day of December, A. D. 1868.

(Sig'd) GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHAN, *D'y Sheriff*.

(Sig'd) FERD. M. GOODRICH.

Attest: J. W. MONTGOMERY.
B. M. BROCODER.

1116 STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify that the within deed is duly of record in my office in Sh'ff's Transfer Book "C," folio 296.

Given under my hand and seal of office this the January 11th, 1869.

(Sig'd) R. J. LONDON, *D'y Clerk.*

A true copy of the original act on file and of record in the recorder's office of East Carroll parish, La., in Notarial Book "N," folios 225 and 226, on the 9th of April, 1869.

Given under my hand and official seal this 17th day of February, A. D. 1883.

[SEAL.] (Sig'd) GEO. J. HOOK,
D'y Recorder.

1117 No. 32. Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendants. Filed April 21st, 1883.

Endorsed: Deed. W. W. Collins, sh'ff, to John A. Stevenson.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

W. T. C. ANDERSON
vs.
JAMES C. DREW. } No. 4635.

Be it known that by virtue of a writ of seizure and sale issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, James C. Drew, to wit: Lots 3, 4, and 7 of sec. 24, T. 19, R. 10 E. and S. ½ of sec. 19, T. 19, R. 11 E., all situated in said parish and State, and containing 448.80 acres, more or less, together with all the improvements thereon or thereto belonging, I, William W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 17th day of March, A. D., 1868, seize the above-described property,
1118 notice of which seizure was served by the sheriff of the parish of Ouachita, on the defendant in writing, on the second day of May, A. D. 1868. I advertised said property in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the court-house door in the town of Floyd, in said parish and State, on the first Saturday, the 6th day, of June, A. D. 1868, for cash, with the benefit of appraisement; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon John A. Stevenson, by his agent and attorney, became the purchaser thereof for the price and sum of eight hundred and ninety-seven $\frac{67}{100}$ dollars, that being $\frac{2}{3}$ of the appraised value of said land, which amount he retained in his hands in part satisfaction of the execution issued in the above-styled suit. Now, in consideration

of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate to the said purchaser all the right, title, interest, and claim which the said James C. Drew has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereunto sign my name officially, together with James W. Draugham and John S. Leftevitch, witnesses of lawful age, residing in said parish and State, this the — day of ——, A. D. 1868.

(Signed) W. W. COLLINS, *Sh'ff.* [L. S.]
JOHN A. STEVENSON, [L. S.]
1119 By SPARROW AND MONTGOMERY, *Att'ys.*

Attest: J. W. DRAUGHAM.
J. S. LEFTEVITCH.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify that the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folio 287.

Given under my hand and seal of office this 20th day of Nov'r, A. D. 1868.

(Signed) R. J. LANDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the within and foregoing is a true copy of the original, duly recorded in this office in Notarial Book "N," folio 191. on Nov'r 22nd, 1868.

Witness my hand and seal of office on this 16th day of February, A. D. 1883.

[SEAL.] (Signed) GEO. J. HOOK,
D'y Recorder.

1120 No. 33. Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed April 21st, 1883.

Endorsed: Deed. Geo. A. Sheridan, sheriff, to L. J. Laud.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

ROBERT PITKIN
vs. } No. 4468.
H. R. WADE.

DANIEL S. TRAVIS
vs. } No. 4257.
H. R. WADE.

Be it known that by virtue of two writs of *fiera facias*, issued from

said court in the above-styled cases and to me directed, commanding me to seize the following-described property, to wit:

The N. E. ¼ of sec. 17, T. 19, R. 10 E.; S. ½ of S. E. ¼ of S. E. ¼ of sec. 8, S. ½ of S. W. ¼ of S. E. ¼ of sec. 8, W. ½ of S. W. ¼ of sec. 9, T. 19, R. 10 east, containing 280 acres; also E. ½ of sec. 18, T. 19, R. 10 E., containing 320 acres—altogether 600 acres, more or less—with all the improvements thereon or thereto belonging; also nine head of mules, 40 head of cattle, 50 head of hogs, and one lot of farming implements—

I, George A. Sheridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the
1121 24th day of October, 1868, seize the above-described property, notice of which seizure I gave Henry R. Wade, defendant, in writing, and on the 31st day of October, A. D. 1868, I advertised said property in the "Elton Eagle," the official paper of said parish and State, to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the first Saturday, the 5th day, of December, A. D. 1868; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in an audible voice.

Whereupon Littlebury J. Laud became the purchaser thereof for the sum of eight hundred dollars in cash, the receipt whereof is hereby acknowledged.

Now, in consideration of the premises and by the authority in me vested by the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, and interest and claim which the said Henry R. Wade has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

In testimony whereof I hereto sign my name officially, together with Robert J. Landon and H. Winbourn Drake, witnesses of lawful age, residing in said parish and State, this the 5th day of December, A. D. 1868.

(Signed) GEO. A. SHERIDAN, *Sh'ff*,
By J. W. DRAUGHAN, *D'y Sh'ff*.
L. J. LAUD.

Attest: R. J. LANDON.
H. W. DRAKE.

1122 STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify that the within deed — duly of record in my office in Sh'ff's Transfer Book "C," folio- 288 and 289.

Given under my hand and seal of office this the 11th day of Jan'y, 1869.

(Signed) ROBERT J. LANDON, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the within and foregoing is a true copy of

the original act, duly of record in this office in Notarial Book "H," folioes 224 and 225, on the 9th day of April, A. D. 1869.

Given under my hand and seal of office this the 16th day of February, A. D. 1883.

[SEAL.] (Signed) GEO. J. HOOK,
D'y Recorder.

1123 No. 34. Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by defendant. Filed April 21st, 1883.

Endorsed: Deed. W. W. Collins, sheriff, to A. and M. Heine.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

A. and M. HEINE
vs.
C. A. DE FRANCE. } No. 4385.

Be it known that by virtue of a writ of *fieras facias* issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Charles A. De France, to wit: A certain tract of land or plantation situated on Joe's bayou, in this parish, and numbered as lots 4 and 5 of sec. 7, and lots 1, 4, and 5 and N. E. ¼ of sec. 18, lots 3 and 4 and S. E. ¼ of N. W. ¼ and N. E. ¼ and S. E. ¼ of sec. 17, all in T. 18, R. 11 E., containing 715.46 acres, together with all the improvements thereon or thereto belonging—

I, William W. Collins, sheriff of the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 31st day of December, A. D. 1867, seize the above-described property under said writ, and on the 9th day of March, 1868, said writ, being about to expire, was returned after making and retaining a certified copy of same, and on the 19th day of the same month and year

1124 I served a notice of seizure on C. A. De France by handing the same to him in person in the town of Providence, in said parish and State, and on the the 28th day of the same month and year I advertised said property in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at the door of court-house in the town of Floyd, in said parish and State, on the first Saturday, the 2nd day, of May, A. D. 1868, for cash, with the benefit of appraisement; and on said day of sale, at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, it appeared that there had been a typographical error in the same.

Whereupon, the defendant being present, accepted service of notice of seizure (as appeared attached to said copy) and consented that the property seized be sold on the first Saturday, the 6th day, of June, A. D. 1868, without further advertisement, or without any advertisement at all, and on the 18th day of May, 1868, said writ, being about to expire, was returned after making and retaining a

certified copy of the same; and on the first Saturday, the 6th day, of June, A. D. 1868, after reading advertisement and recorder's certificate of mortgage, and after having said property duly appraised, I offered the same for sale in an audible voice, at public auction; whereupon A. and M. Heine and James H. Wilson, agent, became the purchasers, the said A. and M. Heine taking title in proportion to the amount of the judgment held by them against C. A. De France; thus the said James H. Wilson, agent, taking title
1125 to four hundred and twenty-eight acres of land and the said A. and M. Heine taking title for two hundred and eighty-seven acres of land, they being the respective purchasers for the price and sum of nine hundred and thirty-three ($\frac{933}{100}$) dollars, that being $\frac{2}{3}$ of the appraised value thereof.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I do by these presents sell and adjudicate unto the said purchasers (in the proportions aforesaid) all the right, title, interest, and claim of the said C. A. De France, defendant, in and to the foregoing described property; to have and to hold the same unto the said purchasers and their heirs and assigns for them and their own proper use and benefit forever.

This done and executed, in said parish and State, in presence of Albert G. Belden and William A. Page, lawful witnesses, this the 6th day of June, A. D. 1868.

[SEAL.] (Signed) W. W. COLLINS, *Sh'ff*,
By J. W. DRAUGHAN, *D'y Sh'ff.*
A. AND M. HEINE,
By SPARROW AND MONTGOMERY,
Att'ys.
JAS. H. WILSON,
By SPARROW AND MONTGOMERY,
Att'ys.

Attest: A. G. BELDEN.
W. A. PAGE.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify that the within deed is duly recorded in my office in Sh'ff's Transfer Book "C," folio- 290 and 291.

Given under my hand and seal of office this Nov. 21st, 1868.

(Signed) R. J. LANDON, *D'y Clerk.*

1126 STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the within and foregoing is a true copy of the original act duly of record in this office in Notarial Book "N," folios 191 and 192, on the 23rd day of November, A. D. 1868.

Given under my hand and seal of office this 16th day of February, A. D. 1863.

[SEAL.] (Signed) GEO. J. HOOK,
D'y Recorder.

(Here follows map marked p. 1126½.)

1126¾ *Petition and Order. Filed February 5th*, 1884.

U. S. Circuit Court, Western District of Louisiana, Sitting at Monroe. In Equity.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
W. G. WYLY *et als.* } No. 1.

To the judges of the circuit court of the United States for the western district of Louisiana:

The petition of the complainant in the above-entitled cause respectfully shows that from the final decree of the circuit court herein she has been allowed an appeal to the Supreme Court of the United States, and that among the documents offered in evidence by complainant and on file herein are certain maps which cannot be conveniently copied into the transcript of appeal and which she desires may be sent up in the original; wherefore she prays that the clerk be ordered to annex the said maps in the original to the transcript of appeal herein.

(Sig'd) HENRY B. KELLY,
Compl'nt's Solicitor.

Upon consideration of the within petition it is ordered that the clerk annex to the transcript of appeal herein the original maps referred to in the within petition, with a copy of said petition and of this order.

Jan'y 7th, 1884.

(Sig'd) DON A. PARDEE, *Judge.*

1127 No. 36. Referred to and made a part of the foregoing testimony. Offerred in evidence before special examiner by complainant. Filed April 21st, 1883.

Endorsed: No. 1038. Mrs. Narcissa I. Green. In bankruptcy. In the matter of Mrs. Narcissa I. Green (formerly Narcissa I. Bell), of Carroll parish, Louisiana.

Schedules. Filed Jan'y 9th, 1869.

SCHEDULE "B."

Form 1.

Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner or which are held by any other person in trust for his

use or to the possession or enjoyment of which he is entitled at the date of filing petition.

Interest in Lands.

1128 Particular description of all real estate owned by petitioner or held by him and whether under contract of lease: None.

Encumbrances thereon, if any, and dates thereof: ——.

Statement of all particulars relating thereto: ——.

Estimated value: ——.

(Sig.) NARCISSA I. GREEN,
Petitioner.

Oath to Schedule B.

UNITED STATES OF AMERICA, *District of Louisiana,* } ss:

On this 31st day of December, A. D. 1858, before me personally came Mrs. Narcissa I. Green, the person mentioned in and who subscribed to the foregoing petition and schedule marked B, respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all *his* debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

W. I. G. BAKER,
Register in Bankruptcy.

1129 *Adjudication of Bankruptcy Upon Debtor's Petition.*

Form No. 5.

In the District Court of the U. S. for the District of Louisiana.

In the Matter of Mrs. NARCISSA I. GREEN, formerly Narcissa I. Bell, by whom a petition for adjudication of bankruptcy was filed on the 9th day of January, A. D. 1869, in said court in bankruptcy, No. 1038, at Monroe, in said district, on the 29th day of January, A. D. 1869, before W. I. G. Baker, one of the registers of said court in bankruptcy.

The undersigned, register of said court in bankruptcy, upon good proof before me, said register, taken, do find that the said Mrs. Narcissa I. Green has become a bankrupt within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, and I do hereby declare and adjudge *him* a bankrupt accordingly.

(Sig.) W. I. G. BAKER,
Register in Bankruptcy.

Endorsed: Filed Feb'y 6th, 1869, at 1 p. m. (Signed) N. Loen, d'y clerk.

1130 District Court of the U. S., Eastern District of Louisiana.

CLERK'S OFFICE.

I certify that the foregoing 4 pages do contain true and correct copies of Schedule "B," form No. 1, and of the adjudication of bankruptcy in the matter of Mrs. Narcissa I. Green (formerly Narcissa I. Bell), No. 1038 of the docket of said court; and I do further certify that the said bankrupt has not been discharged by the court.

In faith whereof I hereto set my hand and the seal of our said court, at New Orleans, this 13th of April, 1883.

(Signed) N. LOEN, *D'y Clerk.*

1131 No. 37. Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainant. Filed April 21st, 1883.

Endorsed: Deed. W. W. Collins, sh'ff, to Jackson B. Tompkins. Notarial Book "N," fol. 65. Recorded March 2d, 1868.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

DANIEL S. VINSON *vs.* A. M. WADDILL. } No. 4155.

Be it known that by virtue of an order of seizure and sale to me directed from the office of the clerk of the 13th district court in and for the said parish and State, commanding me to seize and sell the following-described mortgaged property, to wit:

The N. ½ of — 7 and 191.84 acres to be taken from the south part of section 5, in T. 20, R. 13 east, by a parallel line to be run east and west so as to give that No. of acres adjoining the lands purchased by E. Graves in the same section, and lots 8 and 11 and lots 9 and 10 in section 7, lots 7 and 12 of sec. 7, E. ½ of S. W. ¼ sec. 5, all in T. 20 N., of R. 12 E., and N. ½ of S. E. ¼, lots 6 and 7 of sec. 12, in T. 20, R. 11 E., containing in the aggregate 937 acres, situated in said parish and State, together with all the improvements thereon or thereto belonging—

1132 I, William W. Collins, sheriff in and for the parish of Carroll and State of Louisiana, duly commissioned and sworn, on the 13th day of April, A. D. 1867, seized the above-described property, notice of which seizure I served on Anderson M. Waddill in person by handing the same to him in writing in the town of Lake Providence, in said parish and State, on the 24th day of June, 1867; on the 29th day of the same month and year I advertised said land for sale in the Carroll Record, a newspaper published weekly in the town of Lake Providence, in said parish and State, on the 1st Saturday, the 3rd day, of August, A. D. 1867, for cash, with the benefit of appraisement, at 11 o'clock a. m., and on the said day of sale I was instructed by plaintiff in this case to postpone this sale and readvertise the property to be sold on the first Saturday, the

5th, day of October, A. D. 1867, and on the 31st day of August, A. D. 1867, I accordingly readvertised said property in the above-named paper to be sold as instructed and as last set forth, and on said day of sale I was again instructed by the plaintiff in this case to again postpone this sale, to readvertise the same in the Carroll Record, a newspaper published weekly in the parish of Carroll, La., to be sold on the 1st Saturday, the 7th day, of December, A. D. 1867, at the door of the court-house in the town of Floyd, in said parish and State, at 11 o'clock a. m., which I accordingly did on the 2d day of November, A. D. 1867, and on the said day of sale, to wit, 7th day of December, A. D. 1867, at 11 o'clock a. m., after reading the advertisement and the recorder's certificate of mortgage, having said land duly appraised by appraisers selected by plaintiff and defend-
1133 ant (who failing to agree, H. R. Lott was chosen as umpire), I offered the above-described land for sale, in an audible voice, at public auction to the highest bidder; whereupon Jackson B. Tompkins became the purchaser thereof for the price and sum of fourteen thousand and fifty-five dollars, that being the full amount of the appraised value of said land, which amount he paid in cash in hand, the receipt whereof is hereby acknowledged. Now, in consideration of the premises and by virtue of the authority in me vested by the laws of the State of Louisiana, I do hereby sell and adjudicate unto the said Jackson B. Tompkins all the right, title, claim, and interest which the said Anderson M. Waddill has or had in and to said property; to have and to hold the same unto the said Jackson B. Tompkins, his heirs and assigns, for his own proper use and benefit and behoof forever.

In testimony whereof I hereunto sign my name officially, together with the said purchaser and James W. Draughan and Albert G. Belden, lawful witnesses, residing in said parish and State, this the 7th day of December, A. D. 1867.

(Signed) W. W. COLLINS, *Sh'ff.*
JACKSON B. TOMPKINS.

J. W. DRAUGHAN.
A. G. BELDEN.

STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

I hereby certify the within deed to be duly recorded in my office in Sheriff's Transfer Book "C," folios 244, 245, and 246.

Given under my hand and seal of office this the 2d day of March, A. D. 1868.

(Signed) J. L. CHEATHAM, *Clerk,*
By R. J. LANDON, *D'y Clerk.*

1134 I hereby certify that the within and foregoing deed is duly of record in my office in Notarial Book "N," folio 65.

Given under my hand and seal of office this March 2d, 1868.

[SEAL.] (Signed) T. D. McCANDLESS, *Recorder.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the foregoing is a true and correct copy of the original deed on file and of record in this office.

Given under my hand and the seal of said office this 21st day of April, 1883.

(Signed) F. H. G. TAYLOR,
Deputy Recorder.

1135 No. 38. Referred to and made a part of the foregoing testimony. Offerred in evidence before special examiner by complainant. Filed April 21st, 1883.

Endorsed: Deed. W. W. Collins to Henry L. Deeson. Notarial Book "N," folio 63. Recorded Feb. 28th, 1868.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

HENRY L. DEESON
vs.
WM. M. DEESON. } No. 5516.

Be it known that by virtue of a writ of *fieri facias* issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property belonging to the defendant, Wm. M. Deeson, to wit: Lots or fract. sect's Nos. 25, 26, and 27, T. 21, R. 13 E.; also all that portion of sec. 64, in T. 21, R. 12 east, which is in the rear and adjoining the above-described front lots; also the S. W. ¼ sec. 53, T. 21, R. 12 E.; also the N. ½ of S. E. ¼ and the N. E. ¼ of sec. 63, T. 21, R. 12 E.; also N. E. ¼ of sec. 9, T. 20, R. 12 E.; also that tract of land purchased by Wm. M. Deeson from Mrs. E. Fitzgerald January 6th, 1860, lying on the Mississippi river in said parish and State, bounded on the south and west by the lands above described, known as the Holly Grove, on the north by the property of Mrs. Nancy Short; also the W. ½ of S. W.
1136 ¼ of sec. 52, T. 19 N., of R. 13 E., together with all the improvements thereon or thereto belonging, containing altogether 1,735.19 acres, more or less, together with 43 mules, 2 horses, 2 colts, and the farming utensils on said plantation—

I, Wm. W. Collins, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did on the 18th day of December, A. D. 1867, seize the above-described property, notice of which seizure I gave Wm. M. Deeson, the defendant, in writing, and on the 28th day of December, A. D. 1867, I advertised said property in the Carroll Record, a newspaper published weekly in said parish and State, to be sold at Holly Grove plantation, in said parish and State, on the first Saturday, the 1st day, of February, A. D. 1868, for cash with the benefit of appraisement; and on said day of sale, at the place aforesaid, after reading the advertisement of sale an- the recorder's certificate of mortgage, I offered the same for sale in an

audible voice; whereupon Henry L. Deeson became the purchaser thereof for the price and sum of twenty thousand one hundred and $\frac{64}{100}$ dollars, he, the said Henry L. Deeson, being the highest and last bidder. Now, in consideration of the premises, by virtue of the authority in me vested by the law of the State of Louisiana, I do hereby sell and adjudicate unto said purchaser all the right, title, interest, and claim which the said Wm. M. Deeson has or had in said property; to have and to hold the same unto said purchaser, his heirs and assigns, for his own proper use, benefit, and behoof, forever.

1137 In testimony whereof I hereunto sign my name officially, together with David Hall and Stewart Dalton, witnesses of lawful age, residing in said parish and State, this the 1st day of February, A. D. 1868.

(Signed) W. W. COLLINS, *Sheriff.*
H. L. DEESON.

DAVID HALL.
S. DALTON.

STATE OF LOUISIANA, *Parish of Carroll:*

Thirteenth District Court.

I hereby certify that the within deed is duly recorded in my office in Sheriff's Deed Book "C," folios 242 and 243.

Given under my hand and seal of office this the 28th day of February, A. D. 1868.

[SEAL.] (Signed) J. L. CHEATHAM, *Clerk,*
By R. J. LANDEN, *D'y Clerk.*

I hereby certify that the within and foregoing deed is duly of record in my office in Notarial Book "N," folio 63.

Given under my hand and seal of office this Febr'y 28th, 1868.

(Signed) T. D. McCANDLESS, *Recorder.*

STATE OF LOUISIANA, *Parish of East Carroll:*

RECORDER'S OFFICE.

I hereby certify that the within and foregoing is a true and correct copy of the original deed on file and of record in this office.

Witness my hand and the seal of said office this the 21st day of April, 1883.

[SEAL.] (Signed) F. H. G. TAYLOR,
Deputy Recorder.

1138 No. 39. Referred to and made a part of the foregoing testimony and offered in evidence before special examiner by complainant. Filed April 21st, 1883.

Endorsed: Sale. Succession of Jas. G. Carson to Wm. G. Wyley.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that on this 9th day of December, 1868, before me,

Thomas B. Rhodes, a notary, came and appeared Mrs. Catharine Carson, executrix of the last will of Dr. James G. Carson, dec'd, she appearing through agent and attorney-in-fact, Joseph Carson, who declared and said that by virtue of an order and decree of the parish court of said parish and State, for the sale of the property belonging to the succession of Dr. James G. Carson, dec'd, she caused said property, which is hereinafter mentioned, to be advertised for sale for cash, with the benefit of appraisement required in succession sales, the sale to be made on the premises on the 5th day of December, 1868, which advertisement was inserted and published for 30 clear days previous to the day of sale in the "Elton Eagle" and in the "Carroll Record," two newspapers published in said parish; that on the day of sale he, the said Joseph Carson, agent, repaired to the place of sale, the premises, according to said
1139 decree, and after having offered the Wyley plantation, belonging to said succession and situated in this parish, to the highest bidder for cash, when William G. Wyley bid for the same the sum of one dollar and twenty-five cents per acre, and that being the appraised value thereof, as shown by the inventory of the same on file in court, the said property was publicly adjudicated to him for that sum, he being the highest and last bidder, and having paid and settled the amount of his said bid, which amounted in the aggregate to the sum of one thousand six $\frac{25}{100}$ dollars; that, in consideration of the premises the said Mrs. Catharine Carson, executrix, does sell and deliver to said purchaser, the said Wm. G. Wyly, the said Wyly plantation, described by public survey as follows, to wit: Lots 7 and 9, southeast $\frac{1}{4}$ of S. W. $\frac{1}{4}$, and lot No. 4, of N. W. $\frac{1}{4}$ of *of* sec. 28 and north $\frac{1}{2}$ of northeast $\frac{1}{4}$ of southeast $\frac{1}{4}$ of sec. 29, dividing said forty acres by a line run-ing diagonally from the northwest corner to the southeast corner, in township 19 north of range 11 E. (known as Armstrong tract), and southeast $\frac{1}{4}$ of section 20, and northeast fractional $\frac{1}{4}$ of section 29, and northeast $\frac{1}{4}$ of southwest $\frac{1}{4}$, and southeast $\frac{1}{4}$ of section 33, and southeast $\frac{1}{4}$ of northwest $\frac{1}{4}$ and northeast $\frac{1}{4}$ of southwest $\frac{1}{4}$ of section 33, and northwest $\frac{1}{4}$ of southwest $\frac{1}{4}$ of sec. 21, which two last tracts comprise the said Wyly plantation, all situated in this parish and containing eight hundred and five acres (805), in township 19, north of range 11 east:

1140 To have and to hold unto the said purchaser, the said William G. Wyly, free from all the claims of any and every person claiming lawfully the same.

Thus done and passed in the parish aforesaid before me, said notary, the day and year aforesaid, in presence of Charles A. De France and Cicero M. Allen, who sign with me, notary, and said Carson, agent.

(Signed) CATHARINE CARSON, *Ex'x.*
JOSEPH CARSON, *Agent.*

Attest: C. A. DE FRANCE.
C. M. ALLEN.

THOMAS B. RHODES,
Notary Public.

A true copy of the original on file and duly recorded in this office in Notarial Book "N," folios 219 and 220, on the 31st day of March, 1869.

Witness my hand and official seal on this 20th day of April, A. D. 1883.

Providence, Louisiana, East Carroll parish.

[SEAL.] (Signed) GEO. J. HOOK,
D'y Recorder.

1141 No. 40. Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainant. Filed April 21st, 1883.

Endorsed: Deed. W. G. Wyly to A. J. Wyly.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that this day before me, Sanders D. Oliver, d'y recorder in and for said parish and State, duly appointed and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally appeared William G. Wyly, a resident of this parish, who declared and said that for and in consideration of the price and sum of seven thousand dollars, cash in hand paid by the purchaser, the receipt of which is hereby acknowledged by the vendor, he has bargained, sold, and delivered, and does hereby bargain, sell, convey, assign, and transfer, set over, and deliver, with a full guaranty and warranty against all troubles, debts, mortgages, donations, alienations, or other incumbrances whatever, hereby subrogating the present purchaser to all his rights of action for warranty against his vendors as he could have used himself, unto Andrew J. Wyly,
1142 also a resident of this parish, who is present, accepting and purchasing for himself and acknowledging due delivery and possession of the following-described property and lands situated in this parish, to wit:

That certain plantation on Bayou Macon hills known as the Corbin place, composed, according to legal survey, as follows: The s'west fractional ¼ of sec. No. 25, containing 137.12 acres; also the south half of the S. E. ¼ of section No. 36, all in township No. 21 north, of range No. 10 east, and the north half of the north ½ of the northeast ¼ of section No. 1, in T. No. 20 north, of range 10 east, containing 144 acres; also the S. E. ¼ of the N. E. ¼ of sec. No. 35, and the northwest ¼ and east ½ of the S. W. ¼ of sec. No. 36, and the S. ½ of the n'west ¼ and the north half of the S. E. ¼ of sec. No. 36, and the N. E. ¼ of the N. W. ¼ of section No. 1, T. —, R. 10 east, and the west ½ of the southwest ¼ of sec. No. 31, T. 20 and 21, range 11 east, containing 390.55 acres; and the north ½ of the north ½ of section No. 36, T. No. 21, R. 10 east, containing 137.38 acres; also the S. ½ of the N. E. ¼ of sec. No. 36, T. No. 21, R. 10 E., containing 68.69 acres; also the N. E. ¼ of the N. E. ¼ of section No. 35, T. No. 21, range 10 east, containing 40 acres; also the N. E. ¼ of the S. W. ¼ of sec. No. 31, T. No. 21, range 11 E., containing 40 acres; also the N. E. ¼ of the N. E. ¼ and the s'west ¼ of the northeast ¼ and lot No. 3 of sec.

No. 8, T. No. 20, range 11 east, containing 120 acres; also the S. ½ of the n'east ¼ of section No. 1, T. 20, R. 10 east, containing 66.24 acres, and lot No. 2 of section No. 8, in T. 21, R. 11 E., containing 21 acres, containing in the aggregate 1,165 acres, more or
1143 less, all in the district of lands north of Red river, Louisiana; also ten mules, seventy-five head of cattle, 2 wagons, and all the farming implements and other personal property on said plantation; to have and to hold said described land, with all the improvements thereon and all said personal property, unto the said A. J. Wyly, his heirs and assigns, for his and the-re own proper use, benefit, and behoof, forever. The mortgage certificate required by the civil code of this State is hereby dispensed with by the purchaser, and the U. S. internal revenue tax required by law, amounting to seven dollars, has been paid as per stamps hereto attached and cancelled.

Thus done and passed, at my office, in the town of Providence, in said parish and State, in the presence of Edwin L. Kleinpetre and M. Shelby Powell, witnesses of lawful age, residing in said parish, who hereto sign their names, together with said appear-s and me, deputy recorder, on this the 8th day of November, A. D. 1871.

(Signed) W. G. WYLY.
A. J. WYLY.

Attest: EDWIN L. KLEINPETRE.
M. SHELBY POWELL.

S. D. OLIVER,
Deputy Recorder.

(Here follows map marked p. 1143½.)

1143½ *Petition and Order. Filed Feb'y 5th*, 1884.

U. S. Circuit Court, Western District of Louisiana, Sitting at Monroe.
In Equity.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
W. G. WYLY *et als.*
} No. 1.

To the judges of the circuit court of the United States for the western district of Louisiana:

The petition of the complainant in the above-entitled suit respectfully shows that from the final decree of the circuit court herein she has been allowed an appeal to the Supreme Court of the United States, and that among the documents offered in evidence by complainant and on file herein are certain maps which cannot be conveniently copied into the transcript of appeal and which she desires may be sent up in the original.

Wherefore she prays that the clerk be ordered to annex the said maps in the original to the transcript of appeal herein.

(Sig'd) HENRY B. KELLY,
Complainant's Solicitor.

Upon consideration of the within petition it is ordered that the clerk annex to the transcript of appeal herein the original maps referred to in the within petition, with a copy of said petition and of this order.

Jan'y 7th, 1884.

(Sig'd) DON A. PARDEE, *Judge.*

1144 "X X X." Referred to and made a part of the foregoing testimony. Offered in evidence before special examiner by complainant. Filed April 14th, 1883.

(Endorsed:) Notice.

United States Circuit Court, Monroe.

MARY E. R. BOYD
vs.
WM. G. WYLY *et als.* } No. 1.

To Messrs. Mott & Kelly:

You will please take notice that the defendant- will commence to take the testimony of witnesses in their behalf on Thursday, the 10th day of August, 1882, at Lake Providence, East Carroll parish, La., in accordance with the order of the court made in said case.

July 1st, 1882.

(Sig'd) JNO. T. LUDELING,
Solicitor for Defendants.

1145 *Motion to Withdraw. Filed April 12th,* 1883.

United States Circuit Court, Western District of Louisiana. In Equity.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
W. G. WYLY *et als.* } No. 1.

On motion of Robert Mott and Henry B. Kelly, solicitors for complainant, and of J. R. Beckwith, solicitors for defendants, W. G. Wyly *et als,* it is ordered that they or either of them have leave to withdraw from the clerk's office the testimony of Draughon and others, witnesses for defendant, taken under commission in the parish of Carroll upon leaving receipt therefor with the clerk.

(Sig'd) HENRY B. KELLEY.
(Sig'd) J. R. BECKWITH,
Solicitor for Def't.

April 3rd, 1883.

(Sig'd) DON A. PARDEE,
Circuit Judge.

1146 *Cause Taken up for Trial.*

Extract from the Minutes, April Term, 1883.

MONROE, LA., *May 11th*, 1883.

Court — pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
WM. G. WYLY *et al.* } No. 1.

This case, according to assignment, was this day taken up, and after hearing the argument in part the case was continued until to-morrow morning, Saturday, May 12th, 1883, at 10 a. m.

Trial of Cause.

Extract from the Minutes, April Term, 1883.

MONROE, LA., *Saturday, May 12th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
WM. G. WYLY *et al.* } No. 1.

This case was again taken up and argument partially concluded and case continued until Monday morning, May 14th, 1883, at 11 a. m.

1147 *Trial of Cause.*

Extract from the Minutes, April Term, 1883.

MONROE, LA., MONDAY, *May 14th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
W. G. WYLY *et al.* } In Equity. No. 1.

This case was again taken up and argument resumed, partially concluded, and case continued until to-morrow morning, Tuesday, May 15th, 1883, at 9 a. m.

Trial of Cause.

Extract from the Minutes, April Term, 1883.

MONROE, LA., TUESDAY, *May 15th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD, by Her Next Friend, etc.,
vs.
WM. G. WYLY *et al.*
} In Equity. No. 1.

This case was again called, resumed, and after argument the court took time to consider.

1148 *Bill of Examiner. Filed May 19th*, 1883.

U. S. Circuit Court.

MARY BOYD *vs.* WYLY *et al.*

MONROE, LA., *May 15th*, 1883.

Mrs. Mary E. R. Boyd to J. B. Beattie, Dr.

For services rendered on behalf of complainant as special examiner in the case of Boyd *vs.* Wyly, being suit No. 1 on the equity docket of the U. S. C. C., 5th circuit, western district of La., from Dec. 11th, 1882, to April 28th, 1883, as follows:

Issuing notices in N. O.	4 00
Serving " " " "	2 00
Issuing subpœnas in N. O.	50
Serving " " " "	1 00
4 days' attendance " " "	12 00
Swearing witnesses in " "	30
Testimony taken " " "	76 90
Fare from N. O. to Lake Providence and return	20
5 days' attendance " "	27 60
Issuing notices in " "	15 00
Serving " " " "	3 00
Issuing subpœnas in " "	1 50
Serving " " " "	1 25
Swearing witnesses " " "	2 50
Filing documents in Lake Providence	40
1149 Testimony taken in Lake Providence	121 30
Paid witnesses	4 50
	$275 35
By cash	220 70
Bal. due	$54 65

Received payment in full.
(Signed)

J. B. BEATTIE,
Special Examiner.

Sworn to and subscribed before me this 19th day of May, A. D. 1883.

[SEAL.] WM. RAY,
D'y Clerk U. S. C., Western Dist. of La.

Judgment.

Extract from the Minutes, October Term, 1883.

MONROE, LA., MONDAY, *October 8th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

Mrs. MARY E. R. BOYD *et al.*
vs.
WM. G. WYLY *et al.* } No. 1.

Judgment for all the defendants. See decree.

1150 *Decree. Filed October 9th*, 1883.

UNITED STATES OF AMERICA:

Circuit — of the United States, Western District of Louisiana.

MARY E. R. BOYD
vs.
WM. G. WYLY *et al.* } No. 1.

In this case, by reason of the law and the evidence being in favor of the defendants, William G. Wyly and Charles R. Egelly, and for the reasons stated in the written opinion read in open court and filed in this case, it is ordered, adjudged, and decreed that the pleas of prescription set up by defendants in this case be sustained; that the title of William G. Wyly to the Raleigh plantation (situated on the banks of the Mississippi river, in Carroll parish, Louisiana, and more particularly described in complainant's bill and in the act of sale to Wyly, on record in Carroll parish), acquired at the succession of the property of James Railey, deceased, in October, 1868, is legal and valid, and that William G. Wyly be quieted and maintained in the possession of said property.

And that there be judgment in favor of the defendants, William G. Wyly and Charles R. Egelly, against the complainant,
1151 Mary E. R. Boyd, rejecting her demands, and for the costs incurred by them in this case.

Read and signed in open court this 9th day of October, 1883.

(Signed) ALECK BOARMAN,
U. S. Judge.

1152 *Petition and Order of Appeal. Filed Nov. 2nd,* 1883.

U. S. Circuit Court, Western District of La. In Equity.

Mrs. M. E. R. Boyd, by Her Next Friend, James R. Boyd,
vs.
Wm. G. Wyly *et als.* } No. 1.

To the judges of the circuit court of the United States for fifth circuit & western district of Louisiana:

The above-named complainant, conceiving herself aggrieved by the final decree entered in the above-entitled cause at the October term, 1883, of said court, doth hereby appeal therefrom to the Supreme Court of the United States, and prays that this her appeal be allowed upon her giving bond and security, according to law, to the satisfaction of the court, in such amount as the court may order, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) ROB'T MOTT,
" HENRY B. KELLY,
Complainant's Solicitors.

Appeal allowed as prayed for, returnable in the Supreme Court of the United States on the 2nd Monday of October, 1884, upon complainant's giving bond, with sureties to be approved by the
1153 court, in the sum of two hundred and fifty dollars.
Oct. 29th, 1883.

DON A. PARDEE,
Circuit Judge.

1154 *Bond for Appeal. Filed November 2nd,* 1883.

United States of America:

United States Circuit Court, Western District of Louisiana.

Know all men by these presents that we, Mary E. R. Boyd and James R. Boyd, as principals, and Rob't Mott, as surety, are held and firmly bound, jointly and severally, unto William G. Wyly, Charles R. Egelly, and Frederick W. Boyd, dative executor of the last will of James Railey, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Wm. G. Wyly, Charles R. Egelly, and Frederick W. Boyd, dative executor of the last will of James Railey, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the — day of ——, in the year of our Lord eighteen hundred and eighty-three.

Whereas the said Mary E. R. Boyd, by her next friend, James R.

Boyd, having heretofore, to wit, on the 29th day of October, 1883, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the — day of October,
1155 1883, by the circuit court of the United States for the 5th circuit, holding sessions in and for the western district of Louisiana, in the suit of Mary E. R. Boyd, by her next friend, James R. Boyd, *vs.* Wm. G. Wyly, Charles R. Egelly, and Frederick W. Boyd, dative executor of the last will of James Railey, No. one of the docket thereof:

Now, the condition of the above obligation is that if the above bounden Mary E. R. Boyd, by her next friend, James R. Boyd, shall prosecute her said appeal to effect, and shall answer all damages and costs if — shall fail to make good her plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

(Signed) MARY E. R. BOYD, [L. S.]
By KELLY & MOTT, *Solicitors.*
" JAMES R. BOYD, [L. S.
By KELLY & MOTT, *Sol'rs.*
" ROBERT MOTT.

Signed, sealed, and delivered in the presence of—
(Signed) HENRY B. KELLY.

Bond accepted Oct. 30th, 1883.
(Signed) DON A. PARDEE, *Judge.*

UNITED STATES OF AMERICA, } *ss:*
District of Louisiana, }

Personally appeared Robert Mott, who, being duly sworn,
1156 deposes and says that he is the surety on the within bond; that he resides in New Orleans, Louisiana, and is worth the full sum of two hundred and fifty dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) ROBERT MOTT.

Subscribed and sworn before me this 30th day of October, 1883.
(Signed) FELIX JULINGFREST,
Notary Pub.

1157 *Citation. Filed November 10th,* 1882.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to William G. Wyly, Charles R. Egelly, and Frederick W. Boyd, dative executor of the last will of James Railey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to *to* an appeal filed in the clerk's office of the circuit court of the United

States for the fifth circuit and district of Louisiana, wherein the said Mary E. R. Boyd, by her next friend, James R. Boyd, is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said Mary E. R. Boyd as in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirtieth day of October, in the year of our Lord one thousand eight hundred and eighty-three.

1158 [SEAL.] (Signed) DON A. PARDEE, *Judge.*

Marshall's Return.

(Indorsed.)

Rec'd the within citation, in office, the 3rd day of November, and served the same at the domicile of Judge John T. Ludeling on the same day.

Monroe, La., Nov. 3d, 1883.

(Signed) HENRY J. HAEHL,
Deputy U. S. Marshall.

1159 *Petition and Order. Filed February 5th,* 1884.

U. S. Circuit Court, Western District of La., Sitting at Monroe. In Equity.

MARY E. R. BOYD, by Her Next Friend, etc., *vs.* W. G. WYLY *et al.* } No. 1.

To the judges of the circuit court of the United States for the western district of Louisiana:

The petition of the complainant in the above-entitled cause respectfully shows that from the final decree of the circuit court herein she has been allowed an appeal to the Supreme Court of the United States, and that among the documents offered in evidence by the complainant and on file herein are certain maps which cannot be conveniently copied into the transcript of appeal and which she desires may be sent up in the original.

Wherefore she prays that the clerk be directed to annex the said maps in the original to the transcript of appeal herein.

(Signed) HENRY B. KELLY,
Complainant's Solicitor.

Upon consideration of the within petition it is ordered that the clerk annex to the transcript of appeal herein the original maps
1160 referred to in the within petition, with a copy of said petition & of this order.

January 7th, 1884.

(Signed) DON A. PARDEE, *Judge.*

Petition and Order. Filed March 24th, 1884.

U. S. Circuit Court, Western District of Louisiana, at Monroe. In Equity.

Mrs. M. E. R. BOYD, by Her Next Friend, etc., *vs.* W. G. WYLY *et al.* } No. 1.

To the judges of the circuit court of the United States for the western district of Louisiana:

The petition of the complainant in the above-entitled cause respectfully shows:

That a final decree has been entered in said circuit court dismissing complainant's bill, and that from said decree an appeal has been allowed, returnable to the Supreme Court at its next term; that a certain printed transcript in a suit entitled Johnson, executor, *vs.* Waters, adm'r of Gay, then pending before the Supreme Court of the United States, the said printed transcript being one furnished by the clerk of the Supreme Court, was filed in evidence on the trial of
1161 this cause; that said printed transcript constitutes a volume of three hundred and sixty-one printed pages, and to copy in writing into the transcript of appeal herein will serve no useful purpose, and that it can more conveniently be sent up by being annexed in the official printed form to the written transcript — appeal herein.

Wherefore petitioner prays, the premises being considered, that the clerk be directed, in preparing the transcript of appeal herein, not to make a written copy of said printed transcript, but to annex said official printed transcript to the written transcript as part of the transcript of appeal herein. And petitioner will ever pray, etc.

HENRY B. KELLY,
Complainant's Solicitor.

Considering the foregoing petition, and on motion of Henry B. Kelly, Esq., complainant's solicitor, it is ordered that the prayer of said petition be granted, and that the clerk annex to the transcript of appeal herein, as a part thereof, the official printed copy of said transcript described in the petition, with a copy of this order.

March 15th, 1884.

(Signed) DON A. PARDEE, *Judge.*

1162 *Petition and Order to Send up Original Printed Transcript in Case Johnson, Ex'r, vs. Waters, Adm'r of Gay.*

In Circuit Court of the United States for the Western Dist. of La., at Monroe. In Equity.

MARY E. R. BOYD, By Her Next Friend, &c., *vs.* W. G. WYLY *et als.* } No. 1.

To the hon. the judges of the circuit court of the United States for the western dist. of Louisiana:

The petition of the complainant in the above-entitled cause re-

spectfully shows that a final decree has been entered in said circuit court dismissing complainant's bill, and that from said decree an appeal has been allowed, returnable to the Supreme Court at its next term; that a certain printed transcript in a suit entitled Johnson, ex'r *vs.* Waters, adm'r of Gay, then pending before the Supreme Court of the United States, the said printed transcript being one furnished by the clerk of the Supreme Court was, filed in evidence on the trial of this cause; that said printed transcript constitutes a volume of three hundred and sixty-one printed pages, and that to copy in writing into the transcript of appeal herein will serve no useful purpose, and that it can more conveniently be sent up by being annexed in the official printed form to the written
1163 transcript of appeal herein.

Wherefore petitioner prays, the premises being considered, that the clerk be ordered, in preparing the transcript of appeal herein, not to make a written copy of said printed transcript, but to annex said official printed transcript to the written transcript as part of the transcript of appeal herein; and petitioner will ever pray, etc.

(Sig'd) HENRY B. KELLY,
Complainant's Solicitor.

Order.

Considering the foregoing petition, and on motion of Henry B. Kelly, Esq., complainant's solicitor, it is ordered that the prayer of said petitioner be granted, and that the clerk annex to the transcript of appeal herein, as a part thereof, the official printed copy of said transcript described in the petition, with a copy of this order.

March 15th, 1884.

(Sig'd) DON A. PARDEE,
Circuit Judge.

1164 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE, MONROE, LA.

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 1,161 pages, together with pages marked eighty-two & ½, one hundred & sixty-one & ½, eleven hundred & twenty-six & ½, and eleven hundred and forty-three & ½, making in all eleven hundred and sixty-five pages, together with original printed transcript in case of Johnson, executor, *vs.* Waters, administrator of Gay, with copy of order attached and annexed hereto, do contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Mrs. Mary E. R. Boyd, by her next friend, &c., *vs.* William G. Wyly and Charles R. Egelly, No. 1 of the docket, so far as the same now remain of record or on file in said court.

Witness my ha-d and the seal of said court, at the city of Monroe, Louisiana, this 13th day of May, A. D. 1884.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

1165 *Citation of Appeal.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to William G. Wyly, Charles R. Egelly, and Frederick W. Boyd, dative executor of the last will of James Railey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and western district of Louisiana, wherein the said Mary E. R. Boyd, by her next friend, James R. Boyd, is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said Mary E. R. Boyd, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, La., this thirtieth day of October, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] (Signed) DON A. PARDEE, *Judge.*

1166 *Marshal's Return.*

Rec'd Sep't 1st, 1884, by Wm. Ray, and on 9th day of Sep't, 1884, I served a true copy of the within citation of appeal on W. G. Wyly & Charles R. Egelly & Frederick W. Boyd by delivering the same to John T. Ludeling, Esq., solicitor for said appellees, in person, in the city of Monroe, western district of Louisiana.

(Sig'd) WM. RAY.

Personally appeared before me Wm. Ray and makes oath that he served a true copy of the within citation of appeal on the appellees herein named, as set forth in his official return herein.

(Sig.) WM. RAY.

Subscribed & sworn to before me this 11th day of September, 1884.

[SEAL.] (Sig.) ROB'T RAY,
U. S. Commissioner.

1167 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE, MONROE, LOUISIANA.

I, William Ray, deputy clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 1,161 pages, together with pages marked eighty-two & ½, one hundred and sixty-one & ½, eleven hundred & seventy-six & ½, and eleven hundred & forty-three & ½, making in all eleven hundred & sixty-five pages, together with original printed transcript in case of Johnson, executor, *vs.* Waters, adm'r of Gay, with copy of order attached and annexed hereto, do contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Mrs. Mary E. R. Boyd, by her next friend, etc., *vs.* William G. Wyly and Charles R. Egelly, No. 1 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of Monroe, Louisiana, this — day of May, A. D. 1884.

WM. RAY, *D'y Clerk.*

1168 W. G. WYLEY, a witness produced, sworn, and examined on behalf of the complainants.

(Witness produces a document marked an inventory and states that it is the original inventory filed in the succession of Oliver J. Morgan in the parish court of the parish of East Carroll, filed December 4th, 1868, withdrawn by him under an order of court.)

By Mr. KELLY, solicitor for complainants:

Q. Look at the signatures of the appraisers on that inventory.

A. I am acquainted with both of those appraisers. I have known them for many years in the parish of Carroll. The signature of W. D. Davis, one of the appraisers, is his genuine signature. The purported signature of M. Gingery is not correct. I have known him for many years, and I know personally that he is unable to read and write, having often seen him sign his name by his mark.

(The document marked inventory is here offered in evidence by the complainants, marked Exhibit A.)

Witness continues: Here is a writing dated February 16th, 1866, and signed Edward Sparrow. Having often seen him sign his name, I identify this signature, as also the writing in the body of this letter, which is all in his handwriting.

(This paper is marked B.)

Q. Here is another paper written, dated Lake Providence, 19 of February, 1866, signed by Edward Sparrow, and addressed to Captain William Gay.

A. That letter I identify as being entirely in the handwriting of Mr. Edward Sparrow.

(And is now filed as part of the evidence in this case, and marked C.)

Q. Here is a letter dated Lake Providence, of the date 22d of August, 1866, and addressed to William Gay.

A. I identify the writing and signature of General Sparrow in that letter.

(The letter referred to is offered in evidence by the complainants, and marked D.)

Cross-examined by Mr. CAMPBELL, solicitor for defendant:

Q. Where is the order of removal of that inventory from the record?

A. I have it at the hotel; I forgot to bring it down and have it filed, but I will do it.

Q. Were you employed in the settlement of the Morgan estate—that is, the affairs—by any party?

A. No, sir.

Q. Were you present at the sale?

A. No, sir; I was not.

Q. Were you ever employed by Mr. Buckner, or Mr. Johnson, or Mr. Morgan in this case?

A. No, sir.

Q. Or in the affairs for the settlement of that plantation?

A. No, sir; I was not practicing when that was settled. The sale was on the 19th of June, and I was not practicing at that time.

Q. Were you concerned with either one of these defendants about that time?

1169 A. No, sir; I had nothing to do with the succession at all.

Q. Whose handwriting did you say that signature of Gingery, the appraiser, is in?

A. I don't know what handwriting it is, but I know Gingery could not read or write.

Q. What was his occupation?

A. His occupation was that of a carpenter.

Q. Where did he reside?

A. In Floyd, now West Carroll; Floyd was formerly a part of West Carroll.

Endorsed on cover: W. Louisiana C. C. U. S. No. 113. Mary E. R. Boyd, by her next friend, James R. Boyd, appellant, *vs.* William G. Wyly, Charles R. Egelly, and Frederick W. Boyd, executor of James Railey, deceased. Filed 16th October, 1884.

UNITED STATES CIRCUIT COURT, 5TH CIRCUIT, WESTERN DISTRICT OF LOUISIANA.

Mrs. Mary E. R. Boyd and husband
vs.
W. G. Wyly *et als.*
} In Equity

Opinion of Boarman, J.

R. G. Pollenberg, Printer.

UNITED STATES CIRCUIT COURT, 5TH CIRCUIT, WESTERN DISTRICT OF LOUISIANA.

MRS. MARY E. R. BOYD and husband
vs.
W. G. WYLY *et als.*
} In Equity.

OPIION OF BOARMAN, J.

The complainant alleges that she is the owner of a valuable plantation in Carroll Parish, known as the "Raleigh" plantation, which was bequeathed to her as a particular legatee by her father, James Railey, who died in A. D. 1860. She avers that W. G. Wyly and others, mentioned in the bill, conspired together to fraudulently deprive her of the said plantation by causing it to be conveyed to said Wyly under the forms of a judicial sale, which was made in fraud and without authority in law in October, 1868; that these defendants covertly, taking advantage of the absence of F. W. Boyd, her husband, and executor of the Railey estate, instituted suit against him to destitute him from office, in the Probate Court, Carroll Parish, and in July, 1868, caused C. R. Egelly to be appointed administrator of the said succession; that said Boyd was not cited, and made no voluntary or authorized appearance in the suit, and knew nothing of the proceedings under which the sale to Wyly was made, until after the said illegal

and fraudulent sale had been completed; that the removal of Boyd, and appointment of Egelly was without any effect in law; that Egelly, under pretense of paying debts against the succession, a large part of the debts being for lawyers fees claimed as due to the law firm of which one of these defendants was a member, caused said plantation to be sold, without any notice to claimant, who alleges that she, under her father's will, was and is, *as a particular legatee*, the owner of said plantation; that these defendants caused the plantation to be appraised, in fraud of and in injury of her rights, by incompetent and unworthy appraisers, at the vile price of $2,533.05, at which price it was adjudicated to Wyly, when it was worth much more, and had been appraised two years before, at over $95,000, and he is now and has been since October 20th, A. D. 1868, in possession of the valuable plantation and its large revenues under said fraudulent sale.

The prayer of the Bill is that the will under which she claims as a particular legatee, be declared valid, and that she be put into possession as owner of the plantation bequeathed to her; that Wyly, having purchased in bad faith, be decreed to account to her for the revenues and rents thereof since October 20, A. D. 1868.

This statement of her suit leaves out much of the details of the Bill, and is but a summary of the charges therein; but it is sufficient for the purpose of disposing of the case, under the view I have taken of the defensive pleadings, which disclose matters in bar, in abatement and in answer to the charges of complainant.

The defendant Wyly admits having bought the

"Raleigh" place for $2,533.05, at said succession sale. Though not required by complainant to answer under oath, he has filed answer under oath, denying that he at any time ever combined with the defendants named, or with any one else, to defraud, wrong or injure or deprive, either under the forms of law or otherwise, Mrs. Boyd of her rights or property; that he knew nothing of or concerning the proceedings by or under which she claims to have been injured; that he knew nothing of the removal of Boyd, or of the other proceedings under which the sale of the "Raleigh" Plantation was involved, until after he purchased the same; that he did not know the plantation was to be sold until he saw the advertisement in the newspaper published in Carroll parish. In addition to this denial, which is affirmed by the evidence of himself and by the testimony of other witnesses, he pleads prescription of five and ten years, and all others applicable.

Art.—3478, Civil Code. "He who acquires an immovable in good faith and by just title, prescribes for it in ten years."

3481.—"Good faith is always presumed in matters of prescription."

3487.—"By term 'just title,' is meant a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the property."

The mortuary papers in Railey's succession show that suit was instituted by the Louisiana Bank, and other creditors of his succession, to remove Boyd from the executorship, because he had left the State, and abandoned his trust; and judgment, indicating

in its language the presence of all necessary parties, removing him and appointing Egelly, administrator, was rendered July 18th, 1868. But it is contended that Boyd was not cited and made no appearance in the suit, and in default of citation, or of voluntary appearance, Boyd's executorship could not be effected by the judgment, which was an absolute nullity; that under the proceedings which followed, all of which were procured by fraud and wrongful conspiracy, Wyly could not have purchased in good faith; and that his illegal title cannot as against his equitable and legal rights be made good or cured by any statute of limitations.

To pass upon the plea of prescription provided for in Article 3478, Civil Code—the only one I think it necessary to consider, — it becomes necessary to examine but a part of the testimony in the immense volume of evidence presented to the Court. But, before discussing the evidence bearing particularly upon the plea of prescription, it may be well for me to state here, that on the hearing of this case, at which time, most if not all of the evidence was read to the Court and illustrated by the argument of learned Counsel, and on a most careful consideration of the evidence subsequently made, I was and am now clearly of the opinion that if there was any fraudulent conspiracy or corrupt collusion by or between any of the several persons mentioned in the bill to deprive complainant of her property, Wyly knew nothing of it, and was in no way a party to the wrongful acts.

In the early years after the war, the testimony in this case affirms what is historically known to be true, that the section of the State in which the

Raleigh plantation is situate, was, by overflows and other physical and moral causes, almost entirely bereft of its old-time prosperity and value. The plantation was greatly damaged by previous overflows, and had but little fencing, and it is shown by defendant Wyly, that he, shortly after purchasing it, expended $25,000 in improvements. Defendant has shown, whatever may have been the general causes that depreciated property on the Mississippi river in 1868, that many thousands of acres of land, as valuable as the plantation in question, were sold for prices not unlike the paltry price at which Wyly bought his place. The testimony as to the scarcity of ready money, as to the price for which much valuable land sold when disposed of at forced sale, and as to the political, moral and physical bankruptcy of the Country, leads me to believe that the Complainant and the unpaid creditors of her father's succession were the victims to the indifferent management and neglect of the executor and to the physical and moral prostration of the Country, which was apparent every where in Louisiana in the early years following the end of the war rather than to the acts of any of these several defendants.

Was Boyd cited or properly represented in court when the judgment removing him was rendered? Among the mortuary papers found in the succession of Railey in the Probate Court, in Carroll parish, a paper purporting to be an opposition or appearance of Boyd, executor, appears in a much worse and mutilated condition. It is contended that this paper is wrongfully among these papers, and it was never filed before the judgment, if at all. Upon the genuineness and legal effect of this paper depends the

matter of Boyd's voluntary appearance. It is a single sheet or piece of legal cap paper, with no indorsement or filing on the back of it, as is usual with papers of a like nature. There is nothing in the evidence to show that it came surreptitiously among the mortuary papers. If there was no evidence one way or the other, touching the origin, the authorship and filing of the paper, the presumption of the law that all judicial proceedings are presumed to be regular until the contrary is shown, would sustain the genuineness of the papers, and warrant the court in giving to it its full legal effect. But there is testimony for and against its having been properly filed in the suit to remove Boyd. The testimony of Pilcher, a member of the law firm of Goodrich, Pilcher & Montgomery, is that his firm was in A. D. 1868 Boyd's lawyers in the management of the Railey estate. He says he wrote the paper at the suggestion of Goodrich, who had especial charge and control of Boyd's law matter, and that it was written from a memorandum given to him by Goodrich, who was frequently absent from their place of business. He does not remember about filing it, thinks it must have been a double sheet of legal-cap paper, and the indorsement and filings were written on the cover page, as was his custom in preparing such papers.

Pilcher's testimony, though given by him with such inexactness as often characterizes the evidence of truthful men who testify as to things which occurred 15 years before, is entitled to much importance, because he was then in a position to know more of the matter than any one whose testimony has been presented to the court.

There is no evidence of a very positive character

in the record upon this point, and his testimony, together with the presumption of law and of fact that the probate judge would not have allowed a judgment to be taken removing the executor without the presence in law of the proper parties, adds sufficiently to the clear legal presumption, which favors the genuineness of the paper in question, to overcome the evidence of complainant who offers nothing to show that it came surreptitiously among the mortuary papers, or nothing to discredit Pilcher's evidence. The disputed paper purports to be an answer of Boyd. It is found in the record where it should be, and it must be taken as satisfactorily established that Boyd, as the record shows, was represented in the suit for his removal; and whether Pilcher's law firm or any member of it had or had not authority to represent him, a judgment of a probate court, *where the record shows jurisdiction*, as in this case, cannot, in an action in equity or law to rescind a probate or judicial sale, be treated as an absolute nullity.

It appears that the judgment of which she complains was not appealed from; that no action was taken to annul it, or to set aside any of the proceedings which followed, or were dependent on it for their validity, until this suit was filed in September, A. D. 1881,—more than 10 years after the purchase by Wyly.

It is claimed, however, in argument, that as Mrs. Boyd was in ignorance of all the proceedings by which she was fraudulently deprived of her property, until after the sale was made to Wyly, and as she was unable on account of her inability to defray the expenses of a law suit, to employ lawyers to

prosecute her claims until after the lapse of 10 years, her rights in equity can not be affected or barred by any of the statutes of limitations, relied on by defendants.

Under the rules of pleadings and practice in equity, it is clear that in order to offer evidence, in avoidance of, or for exemption from the statute of limitations upon her claims, she should have set forth in her bill the reasons why she was for so many years ignorant of the ruinous and damaging proceedings of which she now complains, or set forth what were the impediments or hindrances to her securing lawyers to prosecute her claims at an earlier date.

Such allegations do not appear in her bill; but, not restricting her under this rule of practice, I have examined all the testimony upon this point, and I find the following summary of the proceedings had in the Probate Court of Carroll parish. Boyd was removed July 16th, 1868, and Egelly, after due public notice, was granted letters of administration on the sixteenth of September following. On application of Egelly, and certain creditors, an order for the sale was granted, which, after advertisement was made on the twentieth of October, 1868, Egelly rendered his final account, and after due notice it was, without opposition, homologated on the seventeenth of April, 1869.

In 1869 Wyly sued out his monition, in which, after public notice, judgment was rendered. In addition to this, Mrs. Boyd says her husband was in Carroll parish in January, 1868, and she does not state whether he was there later in the summer, but

she says that she knew of the sale to Wyly in the fall of 1868.

The evidence shows, too, that Boyd, claiming to be executor in A. D. 1874, collected $37,000 from the Federal Government on account of a cotton claim belonging to Railey's succession, no part of which large sum was paid to any of the numerous succession creditors of Railey's succession. This money belonged to the succession, and with a very small part of it, she or her husband, who still claimed to be executor, could have defrayed the expenses of a suit to bring the "Raleigh" Plantation back into the succession assets. It is difficult, under this summary of facts, to see any good reason for denying to Wyly the benefit of the prescription of 10 years under which the Civil Code wisely protects purchasers in good faith who have been holding and possessing, as owner, more than ten years under a title translative of property.

If a further reason for confirming Wyly's legal title was necessary, it can be found in the principle of law, abundantly supported by numerous decisions of the Supreme Court of Louisiana, that a purchaser at a judicial sale, is protected by the order or decree of the court, and he need not look beyond the decree and the jurisdiction of the court ordering the sale: the truth of the record concerning matters *within its jurisdiction* cannot be disputed in an action like this. 14 La., 146; 7 Rob., 66; 10 Rob., 396; 14 La., Ann. 154; 22 La., Ann. 175; 25 La., Ann. 55; 28 La., Ann. 755.

Under the view I have taken of the defensive pleadings and proof, I have thought it unnecessary to discuss only in a general way the relations of the several other defendants aside from Wyly, to the

complainant's demand; but the opinion and decree of the court will protect all of them against the demands of complainant.

Decree for Defendants.

CLERK'S OFFICE, UNITED STATES CIRCUIT COURT,
5TH CIRCUIT, WESTERN DIST. OF LOUISIANA.

I hereby certify the foregoing to be a true and correct copy of the original on file in this office.

Witness my hand and the seal of our said Court, at the City of Monroe, La., this the 8th day of December, A. D. 1887.

J. B. BEATTIE,
D'y Clk.

Supreme Court of the United States.

OCTOBER TERM, 1887.

MARY E. R. BOYD, *by her next friend* JAMES B. BOYD, *Appellant*,

vs.

WILLIAM G. WYLY, *and others.*

No. 113.

Appeal from U. S. Circuit Court, W. D. Louisiana.

BRIEF FOR APPELLANT.

ROBERT MOTT,
WM. A. MAURY,
For Appellant.

R. O. POLKINHORN, PRINTER.

Supreme Court of the United States.

OCTOBER TERM, 1887.

MARY E. R. BOYD, *by her next friend* JAMES B. BOYD, *Appellant*,

vs.

WILLIAM G. WYLY, *and others.*

No. 113.

Appeal from U. S. Circuit Court, W. D. Louisiana.

BRIEF FOR APPELLANT.

BILL.

The bill (pp. 6–7) is brought on behalf of Mrs. Mary E. R. Boyd, wife of Frederick W. Boyd, by her next friend and son James R. Boyd, all of Waukesha, Wisconsin, against William G. Wyly and Charles R. Egelly, of the Parish of East Carroll, Louisiana, and Frederick W. Boyd, of Waukesha, Wisconsin, as dative testamentary executor of the last will of James Railey, late of Adams county, Mississippi, deceased, and avers, in substance:

That, on the 1st of February, A. D. 1860, James Railey, the father of complainant, made his last will, (pp. 16, 17,) and died in the summer of that year,

leaving large estates in Mississippi, Arkansas and Louisiana, which were disposed of by the will, and that, by the terms of the will, the testator bequeathed to complainant a certain plantation of great value, in the then Parish of Carroll, Louisiana, known as the Raleigh Plantation, which the bill describes; that James G. Carson was named in the will as executor; that the will was duly probated in the proper court of the Parish of Carroll, and that Carson qualified, according to law, as executor, and took upon himself the burthen of the execution of the will; that an inventory and appraisement of the property of the succession, in the Parish of Carroll, were made, by competent and honest appraisers, on the 12th of December, 1860, and that the lands of said Raleigh Plantation were valued by them at *one hundred and nineteen thousand three hundred and ninety-three dollars.*

That, thereafter, Carson, executor as aforesaid, died, and Frederick W. Boyd, the husband of complainant, was, by the proper authority, appointed dative testamentary executor of said will, gave bond and qualified according to law, and received letters of executorship in due form; and that on *the 16th of July*, 1866, the said Raleigh Plantation was again inventoried and appraised, by honest and competent appraisers, as containing 1939 acres, more or less, of the value of *fifty-five dollars* per acre, equivalent, for the whole plantation, to *ninety-five thousand six hundred and forty-five dollars.*

That in the month of July, 1868, the defendants, William G. Wyly and Charles R. Egelly, combining and confederating with Edward Sparrow and J. West Montgomery, attorneys at law, practicing in

partnership under the firm name of Sparrow & Montgomery, and with divers other persons, contriving to wrong, injure and defraud complainant, and to transfer to said Wyly, under the forms of law, the apparent title to said Raleigh Plantation, covertly taking advantage of a temporary absence of Frederick W. Boyd, the dative executor, instituted on the 16*th of July*, 1868, proceedings in the Parish Court of Carroll parish, to destitute him from office, and to procure the appointment of Egelly as administrator of the succession; that the said Boyd was not made a party to the proceedings to destitute him, either personally, or by the appointment of a *curator ad hoc* to represent him, and had no notice whatever of the proceedings, nor of the subsequent proceedings resulting in the sale of Raleigh Plantation to Wyly, until the same had been consummated.

That on *the same day* on which the proceedings to destitute Boyd of the executorship *were instituted*, without any service, or pretense of service of citation or notice, without any appearance on his behalf, or any joinder of issue, upon a mere *ex parte* affidavit of J. West Montgomery, one of the lawyers who had instituted the proceedings, *judgment was rendered* removing the said executor from office; and that, thereafter, on the 16th of September, 1868, Egelly was appointed administrator of the succession, and gave bond as such, with his attorney, the said J. West Montgomery, as his surety.

Complainant says, that she is advised that the said proceedings for the destitution of said executor, and the appointment of said Egelly as administrator, are absolutely null and void, and, that by virtue

thereof, the said Egelly became only administrator *de son tort* of the said succession, and is responsible to complainant for the wrong and injury sustained by complainant by reason of his acts as such as in the bill set forth.

That on the same day that the proceedings for the destitution of the executor *were instituted and ended*, to wit, on the 16th of July, 1868, an order was obtained for a *new* inventory and appraisement of the property of the succession, and that such inventory and appraisement were made on the 4th of September, 1868, and that the said confederates, in pursuance of their said fraudulent scheme, corruptly procured a false and base appraisement of the Raleigh Plantation to be made, by ignorant and incompetent appraisers, who either knew nothing of the real value of the property, or acted corruptly and dishonestly in undervaluing it, and that one of the appraisers, Michael Gingery, was so ignorant and illiterate as to be unable to sign his name, and that what purports to be his signature to the appraisement is *a forgery;* that the lands of the Raleigh Plantation, which were correctly and fairly appraised by competent judges in 1866—two years previous—as worth *fifty-five dollars* an acre, were appraised by the said Gingery and his associate as worth *one dollar and a half* an acre, and that the plantation which had been correctly appraised in 1866, as worth *ninety-five thousand six hundred and forty-five dollars*, was corruptly and fraudulently appraised, in 1868, as worth only *twenty-five hundred and thirty-three dollars and three cents.*

The bill further avers that, for the ostensible reason that it was necessary in order to the payment of alleged

debts of said succession, to the large amount of forty-six thousand dollars, one of said alleged debts being six thousand dollars to Sparrow & Montgomery, as attorneys of the estate, an order was obtained from the Parish Court for the sale of Raleigh Plantation for cash, and that after a single advertisement in an obscure paper, the said plantation was, covertly and without the knowledge of complainant or of her said husband, on the 20th of October, 1868, fraudulently adjudicated to Wyly, for the price of one dollar and a half per acre, or for the total sum for the entire plantation of *twenty-five hundred and thirty-three dollars and five cents.*

The bill avers that the vileness of the price for which said plantation was adjudicated to Wyly, is a flagrant badge of the unreal and fraudulent character of the transaction, and that Wyly, who is a man of education and intelligence, and a lawyer by profession, was fully cognizant of the true character of the transaction, was a purchaser in bad faith, and is to be held in equity to have acquired the legal title to the said Raleigh Plantation, in trust for complainant, and as responsible to her, from the date of his said purchase for the rents and revenues thereof.

The bill avers that all of the money for which this fine plantation was sold to Wyly, except one hundred and eighty-one dollars and eighty cents for commissions and court costs, was paid to Sparrow & Montgomery on account of a debt claimed to be due them *as lawyers of the estate.*

The bill then states that shortly after the adjudication of the plantation to Wyly, he sued out in the proper court a process known to the law of Louisi-

ana as a monition, alleging that he was "an innocent third party" who had purchased the plantation in good faith, and praying for a judgment of homologation of title, which was accordingly entered, and which he pretends has cured all vices and defects in his title; whereas the bill charges that under the laws of Louisiana, process of monition and judgment of homologation of title thereunder, extend only to the cure of defects of form, and not to the validation and ratification of acts of fraud and spoliation, such as characterize the pretended purchase as aforesaid of Raleigh Plantation by Wyly.

The bill avers that, at all times since Wyly has been in possession of the plantation, it has produced and still produces large fruits and revenues for which he is accountable to complainant; that under the apparent legal title so as aforesaid, acquired by him, he withholds from complainant possession of the Raleigh Plantation, and the fruits and revenues thereof, and will continue so to do until compelled by decree of court to make restitution.

Frederick W. Boyd, as dative testamentary executor of the will of James Railey, was made party to the cause by amendment to the original bill, and by the same amendment complainant avers, that her brother, H. Otey Railey, mentioned in the will, has disclaimed and disclaims in her favor any and all claim to the property described in the bill, and sought to be recovered by complainant in this suit, and the rents and revenues thereof, and that by reason of such disclaimer, it is not necessary that he should be made a party to the bill.

The prayer of the bill is that the defendants may answer the premises, but not under oath, the benefit

of which is expressly waived, and that the court will decree that the document dated the 1st of February, 1860, purporting to be the last will of complainant's father, James Railey, late of Adams county, Mississippi, deceased, and duly probated as such in the proper court of the parish of Carroll, is a valid will, and that the bequest of the said Raleigh Plantation to complainant is a valid bequest, and constitutes a valid and subsisting title in complainant, under which she is entitled to be put into possession of said plantation as owner thereof; and that the pretended sale thereof by the said Egelly to the said Wyly, on the 20th October, 1868, was collusive and fraudulent, and null and void, and that the said Wyly was in bad faith in pretending to purchase said plantation; that he be decreed to deliver possession thereof to complainant and to account to her for the fruits and revenues thereof from the 20th of October, 1868.

Defensive Pleadings.

The first defensive pleading put in on behalf of the defendants Wyly and Egelly, is a document denominating itself upon its face "Pleas and Exceptions" to the bill, (pp. 9–15,) embodying no less than eight or nine separate and distinct pleas, every one of which is to the whole bill, and all of which are accompanied by a partial answer to the bill professing to be filed in conformity to Equity Rule 32.

This congeries of pleas, was, after argument, allowed to stand, (p. 26,) and, after further argument, complainant was allowed to file a replication to them, (p. 26,) and thereafter testimony was taken upon the issues so joined.

Subsequently, by advice of counsel, a *full answer* to the bill was put in by Wyly (pp. 30–37). This answer, of course, overrules the pleas which had been previously put in by Wyly, which are thereby abandoned, and it will therefore not be necessary to refer to the matters set up in those pleas except to the extent to which they have been reiterated and adopted in the answer.

Divers matters, in abatement, in bar, and to the merits, are set forth in the answer, the substance of which, we will endeavor to state here succinctly, rather in the sequence of orderly pleading than in that in which they appear in the answer itself.

The matters in abatement and in bar, irrespective of the merits, are:

1. That complainant, by reason of her coverture disclosed in the bill, is incompetent to bring this suit without her husband being joined with her as a party complainant.

2. That it appears by the bill that complainant's husband, F W. Boyd, was at one time dative testamentary executor of the will of James Railey, and that it is claimed in the bill that the proceedings referred to therein, whereby it was sought to destitute said Boyd of the executorship, are void, and that, therefore, upon the showing of the bill, the correctness of which, however, is not admitted, the said Boyd appears to be a necessary party as dative executor, as aforesaid, and that the bill is defective, by reason of his not having been made party in said capacity.

3. That it appears from the bill, and from the will, that Belle Railey, Cornelia Railey, H. O. Railey and C. Randolph Railey are either heirs, or particular

and special legatees of the testator, and that the bill is defective, by reason of their not having been made parties thereto.

4. That complainant has never accepted the succession, without benefit of inventory, nor given any bond to secure legatees or creditors, nor has there been any order or judgment of any probate court recognizing her as an heir or legatee, or putting her in possession of the Raleigh Plantation, nor has she ever had seizin thereof.

5. That said succession, and all controversies therein, are still open, pending and unsettled in the Probate Court of East Carroll, which has exclusive jurisdiction over said succession, and all matters and controversies therein; and that the orders and decrees of said court, referred to in the bill, are *res adjudicatæ* against complainant, and bar the relief sought by the bill.

6. That the complainant has never made any tender to defendant of the price paid by him for the property sought to be recovered.

7. That the action is barred by the prescription of ten years. The prescription of five years, under Art. 3,542 of the Civil Code, is also pleaded.

8. That the complainant is precluded from claiming the relief sought by the bill by reason of the alleged fact that, at the time of the purchase of Raleigh Plantation by Wyly, the succession of James Railey was insolvent.

9. That the complainant is precluded from claiming the relief sought by the bill by effect of the judgment of homologation of title in the munition suit of Wyly.

10. That the bill is without equity on the face of it.

On the Merits.

The answer admits the execution, purport and probate of the will, and the death of the testator as set forth in the bill; and a copy of the will is annexed to and made part of the answer.

It is admitted that at the time of his death, the testator was owner of the Raleigh Plantation referred to in the bill; that James R. Carson, named as executor in the will, accepted the trust and qualified as executor, but it is averred that, before having dealt in any material way with the succession, he died, and that thereafter, about the month of July, 1866, Frederick W. Boyd was appointed and qualified as dative executor, as stated in the bill.

The answer then alleges, upon information, that Boyd was unfaithful to the trust, that he took possession of the property of the succession and used it for his own benefit, that he made no attempt to pay any of the debts of the succession, neglected to render any account, involved the affairs of the succession in confusion, and finally escaped from his office and the control of the Probate Court, by permanently abandoning the State; that he had so abandoned his trust long prior to July, 1868, and that the succession was thus left vacant; when the Probate Court "having full jurisdiction, with full and competent authority in the premises," adjudged said succession to be unrepresented, and appointed Egelly administrator, who qualified and proceeded to administer upon the succession; that Boyd has

never rendered any account of his executorship, and that defendant is informed that upon a just account he would be found largely indebted to the succession ; that, though well informed of the action of the Court in destituting him of the executorship, he has never attempted to have said action annulled or avoided by appeal or otherwise, but the same stands as the judgment of the Probate Court unreversed and in full force.

Further answering, the defendant says that the statement in the bill that, at the time specified in the bill, or at any other time, he combined or conspired with Egelly, or with Sparrow or Montgomery or with any other person to defraud the complainant, under the forms of law or otherwise, or to transfer the apparent title of the Raleigh Plantation to himself, is in all things absolutely and unqualifiedly false, and that it is false that he had any part in or knowledge of the proceedings which led to the destitution of Boyd and the appointment of Egelly ; that prior to the date of the advertisement of the property for sale by order of the Probate Court, under which order the sale of 20th October, 1868, was made, he was a total stranger to all the proceedings in that court : that prior to the purchase of the property he had never seen the record, and had no knowledge of the order of sale beyond that derived from the newspaper advertisement.

That it is true that, on or about the 20th of October, 1868, he purchased the plantation, but he avers that he did so in good faith, at a public sale, duly advertised ; that he was a bidder at the sale in competition with others, and the property was adjudicated to him as the highest bidder ; that he paid the

full sum bid to the succession, and that it was administered upon and distributed in the Probate Court, in which proceedings he was in no manner interested, and that his only means of information on the subject is the record of the Court.

That so much of the bill as avers "that the vileness of the price for which said plantation was adjudicated is a flagrant badge of the unreal and fraudulent character of the transaction" is scandalous, bad pleading, and false and untrue. That the sale was a fair public sale, open to competition by all persons, and *that the price paid was fully equal to the price for which like lands were at that time selling in that locality*, as complainant well knows; and that it is not true, but unqualifiedly false, that he purchased in bad faith and in fraud, or by or through any fraudulent combination or conspiracy with any person whomsoever.

That it is true, as stated in the bill, that a short time after he had purchased the property, and after he had become acquainted with the record of the proceedings in said succession, and after he was informed of the character thereof by inspection, he did sue out in the proper court proceedings of monition, in which there was judgment entered homologating his title and declaring the same good and valid, which judgment was never appealed from, but is in full force, and that he claims all the results which by law should and do flow from said judgment under the law of Louisiana.

And further, he says again, that the averment in the bill that he was a purchaser in bad faith is false, and that it is not true that he is to be held, either in law or equity, to have acquired the property in trust

for complainant or any other person, nor is he responsible to her or to any person for the rents and revenues thereof, and "*that any such pretense is a sham and a fraud.*"

The cause, being duly at issue and much testimonial and documentary evidence having been adduced on both sides, came on to be heard upon the pleadings and evidence, and the court being of opinion to dismiss the bill, it was accordingly so decreed on the 9th October, 1883. (p. 557.)

Assignment of Error.

The decree dismissing the bill is erroneous in this, that the relief prayed for in the bill should have been granted.

Argument.

Before proceeding to discuss the question whether, upon the merits, the claim of complainant to be relieved from the consequences of the acts of fraud and spoliation specified in the bill, is, as charged in the answer, a fraudulent and sham pretense on her part, or, is a demand warranted and sustained by the facts as they appear in evidence, and the law as administered in courts of equity, we will endeavor to clear the approach to the consideration of the merits of the cause from the *chevaux de frise* of technical obstructions interposed to prevent the merits of the cause being reached by the court at all.

1. The first objection of this character is, that by reason of the coverture of complainant, disclosed in the bill, it appears that the bill is defective because

of her husband's not having been joined with her as a party complainant therein.

The bill relates to the separate property of the wife, and is framed in conformity to the requirements of the rules of equity procedure in such case, being filed in her name by her next friend.

"In general," says Daniel, Ch. Pl. and Pr., 109, "where the suit relates to the separate property of the wife, it is necessary that the suit should be filed in her name by her next friend; otherwise the defendant may demur." * * *

"The result of the cases seems to be that whenever the interests of a married woman are brought before the court, they will be attended to, whoever the person applying to the court may be." *Id. ib.* 91, n. 5.

"Courts of equity stand *in loco parentis* to fêmes covert." *Id. ib.*, 92.

The relation of the husband, in this case, to the separate property of the wife sought to be recovered in this suit, is such that he has properly been made a party *defendant* to the bill.

2. It is objected, in the answer, that, from the averments of the bill, that Frederick W. Boyd had been duly appointed and qualified as dative executor of the will of James Railey, and that certain proceedings of the court of probate, whereby he was destituted of the executorship, were null and void, the bill appeared to be defective by reason of his not having been made party thereto, as dative testamentary executor as aforesaid.

By an amendment to the bill filed since the answer was put in, this objection has been obviated.

3. It is further objected by the answer that it appears from the bill and from the will of James Railey that Belle Railey, H. O. Railey, Cornelia Railey and C. Randolph Railey, are either heirs, or particular and special legatees of the testator, and

that the bill is defective, by reason of their not being made parties thereto.

H. O. Railey is mentioned in the will in such connection with the property sought to be recovered by complainant that, upon the face of the will, and of the bill as originally framed, he might perhaps have been held to be a necessary party to the suit. Since the answer was put in the complainant has amended her bill, so as to avoid objection on this score, by setting forth and averring the fact that the said H. O. Railey has disclaimed, and disclaims in favor of complainant, any and all rights under the will, or otherwise, to the property sought to be recovered in this suit; and he has filed such disclaimer of record in the cause.

As to the other persons named in the objection, it is not necessary that they should be made parties either as heirs or legatees.

The 50th Equity Rule of the Supreme Court expressly declares, that in suits to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party.

A particular legatee may sue a party in possession of specific property comprised in the legacy, and claiming title thereto under probate sale to pay debts, without making other legatees under the will parties to the suit.

Pysche vs. *Paradol*, 6 L. 366, was a suit, by a *particular* legatee to recover *specific* property, brought against the party in possession, claiming to derive title from a probate sale, made at the instance of the testamentary executor, ostensibly to pay debts of the succession.

The plaintiff was not only particular legatee of

the specific property sued for, but was, conjointly with another particular legatee, a general residuary legatee under the will.

Nothing was sought to be recovered in the suit, however, except the property comprised in the particular legacy, with its increase and fruits, and neither the other particular legatees of the will, nor the co-residuary legatee, nor any representative of the executor, who was dead, nor of the succession of the testatrix, was made party to the suit, which was brought directly against the party in possession, who called in warranty his vendor, whose vendor was purchaser at the probate sale, but who does not appear to have been made party to the suit.

In this form of action the plaintiff had judgment in the District Court against the party holding under the purchase at probate sale, for the specific property claimed, with its increase and earnings, and this judgment was affirmed on appeal by the Supreme Court.

The case just referred to was in a Louisiana State Court, but the authorities are equally conclusive as to the course of courts of equity in like cases.

Where a legacy is given to *two jointly*, one cannot sue for it alone, though where there are several legacies each may sue for his own.

1 Dan. Ch. Pl. and Pr. 201, 211.

A legatee may sue alone for his own legacy.

Id. Ib. 238.

While the right of a mere pecuniary legatee, or of residuary legatee to pursue property of the estate, unlawfully aliened, into the hands of the tranferee was at one time questioned, the right of a *particular*

legatee to pursue *specific* property so aliened, has never, at any time, been controverted in the Courts of Chancery.

In *McLeod* vs. *Drummond*, 14 Vesey, 353, there were four executors named in the will, two of whom qualified and acted, and, while so doing, aliened property of the estate, and, thereafter, became bankrupt; thereupon, the two other executors, having qualified, brought their bill against the transferees of the bankrupt executors, to recover the property, which had been transferred to them.

The master of the rolls, SIR WM. GRANT, said:

"* * The case of *Hill* vs. *Simpson*, 7 Vesey, 152, is, probably, the first in which a mere pecuniary legatee succeeded in attempting to follow assets aliened by the executor. * * Certainly the claim to it is by no means so strong, and, therefore, not so easily supported as that of a *specific legatee demanding a specific thing bequeathed to him.* * * We believe this is the first instance of executors themselves coming forward, the question *usually* arises in a suit instituted by *specific legatee or devisee.*"

When the same case came before the Lord Chancellor, 17 Vesey, 167, LORD ELDON said:

"* * * The last case, *Hill* vs. *Simpson*, 7 Vesey, 152, is also very important, on which the Master of the Rolls observes justly that for the first time he was of opinion that a general pecuniary legatee had a right in equity to follow the assets. Lord Hardwicke having frequently considered it as doubtful whether, even in the exceptional cases, any one but a creditor or a *specific legatee* could follow them. I concur in the principle laid down by the Master of the Rolls, and cannot conceive why, in a case falling within the exception, a creditor and a specific legatee should be able to follow the assets, and not a pecuniary or residuary legatee."

The jurisprudence on this subject, as now settled, is succinctly stated in 1 Story Eq. Jurisp., § 424:

"It seems at one time to have been thought that no person but a creditor, or *a specific legatee of the property*, could question the validity

of the disposition made of the assets by an executor, however fraudulent it might be. * * * It is now well understood that pecuniary and residuary legatees may question the validity of such disposition."

From the foregoing authorities it is clear:

a. That the right of a legatee of specific property to claim such property from a transferee in possession of the property under a fraudulent and collusive sale by the executor, and to have such sale avoided, by bill in equity, has at all times been recognized without controversy in courts of chancery.

b. That the legatee of such specific property may sue alone for it.

c. And that neither the heirs at law nor other legatees are necessary parties to such suit.

4. It is further objected, in the answer:

That the complainant has never accepted the succession of James Railey, without benefit of inventory:

That she has never given any bond to secure legatees or creditors;

That there has been no judgment of any court of probate recognizing her as heir or legatee, or putting her in possession of Raleigh Plantation, and that she has never had seizin thereof.

The complainant is not claiming as heir at law, or as universal legatee or testamentary heir of James Railey, to be recognized as such and put into possession of his general estate or succession.

All the provisions of the Civil Code of Louisiana relative to recognition and putting into possession by the Probate Court relate to heirs, instituted or at law, and not to particular legatees, claiming, not the general estate, but the specific property bequeathed to them. C. C. 1055, 6, 7, 8.

Even if complainant were claiming the general estate as heir, no previous acceptance of the succession, with or without benefit of inventory, would be necessary before bringing suit to recover the property of the succession.

In *O' Donnell* vs. *Lobdell*, 2 L. 301, the Supreme Court of Louisiana said: "By the Roman law, and that of Spain, the acceptance on the part of the heir was necessary to vest in him a right to interfere with the succession." Our old code recognized this principle, and declared "that until the acceptance or renunciation, the inheritance is considered a fictitious being, representing in every respect the deceased, who was the owner of the estate. *C. Code*, 162, *Art.* 74."

The legislation in the Louisiana Code has made a material change in this part of our law. The jurisconsults charged with the preparation of this work, in their report to the General Assembly, expressly state that they thought it wise "to adopt the rule which vests the right of the heir from the moment of the death of the deceased." *See report of proposed amendments, page* 114.

This was the doctrine of the ancient law of France, expressed by the well known phrase: *La Mort saisit le vif*. * * * The result of the whole legislation on this subject we take to be, that the heir may institute suits before he accepts or rejects. It is true, if he be of the age of majority, and do so without qualification, this in itself will be an acceptance."

He who assumes the quality of heir in a judicial proceeding accepts the succession simply. *Le Cesne* vs. *Collin*, 2 N. S., 457.

In *Heirs of Le Page* vs. *N. O. Gas Co.*, 7 R., 183, the Supreme Court of Louisiana held, that one suing as heir for property of a succession, cannot be required, in order to authorize him to sue, to show that he has been recognized as heir, and put in possession of the estate by a decree of the Probate Court of the place where the succession is administered. All that can be required of him is to furnish satisfactory evidence of his right to inherit. The recognition of the heir by the Probate Court is only necessary when he seeks to compel a curator, executor or administrator to account. C. P. 1,000, 1,001, 1,002, 1,003.

Against a spoliator or unlawful possessor of succession property, a joint heir or proprietor may maintain a petitory action for the entire property without joining with him in the action his co-heirs or co-proprietors.

Dufour vs. *Camfranc*, 11 M., 713;
Pearson vs. *Grice*, 6 A., 235;
Compton vs. *Matthews*, 3 L 134.

There is nothing in the objection that complainant has never given bond to secure creditors and legatees. The provisions of the Civil Code under which bond may be required, in certain cases, to secure legatees and creditors, have reference *only* to heirs or universal legatees. There is no law requiring a particular legatee, *in any case* to give security for the payment of other legatees or of creditors.

Bond to secure the payment *of legacies* may, in the cases specified in the Code, be required of an heir, by an executor or administrator. Bond to secure the payment of creditors may also be required

of an heir, in the cases specified in the Code. But the *creditors* must make the claim themselves. An executor or administrator can not require such bond in their name. He can only require a sufficient sum to pay the movable or particular legacies before he delivers up the estate to the universal heir or legatee.

C. C. 1012, 1671 (1664).
Succession of Fisk, 3 A. 707.
Succession of Boutte, 30 A. 128.

None of the provisions of the Civil Code relative to the recognition of heirs and to the putting of them into possession of successions by courts of probate, have any reference or relevancy to the claim of a particular legatee to the specific property bequeathed to him. Nor can the distinction of acceptance, with or without inventory have any application to such a claim. Nor is it necessary that the particular legatee should have had possession or seisin of the specific property bequeathed to him, and been dispossessed of it, in order to enable him to maintain an action to recover it from an unlawful possessor or spoliator, claiming title to it under a collusive and fraudulent sale by an executor or administrator. Art. 1630 C. C. declares that —

"The delivery of a legacy under a particular title must be demanded of the testamentary executor who has seisin of the succession. If the testamentary executor has not the seisin, or if his functions have expired, the legatees must apply to the heirs."

That article, of course, can have application only where the possession or seisin of the property sought to be recovered is in the executor or heirs at the time the demand is made; and, obviously, can have

no relevancy to a case where the property is not and never has been in the possession of the heirs, but is in the actual possession of a third party claiming title under a fraudulent and collusive sale by an administrator. In such case the property can be recovered only in a petitory action which must be brought against the party in *actual* possession, and in a court of ordinary jurisdiction, as was done in *Psyche* vs. *Paradol*, 6 La. 366; C. P. 43. In that case the suit was against the unlawful possessor *alone*, who claimed title under a probate sale made at the instance of an executor, ostensibly to pay debts, and neither any representative of the executor, who was dead, or of the succession of the testator, was made party to the suit.

An action by which real property is claimed, or a petitory action, must, under the State practice, in all cases be brought against the person who is in actual possession. C. P. Art. 43.

Such action must be brought before a court of ordinary jurisdiction. Probate Courts have no jurisdiction of suits against third persons to recover succession property, which has come into their hands. All claims to real property belong to courts of ordinary jurisdiction.

O' Donoghue vs. *Knox*, 11 L., 388;
Donaldson vs. *Dorsey*, 4 N. S., 509;
Casanova vs. *Acosta*, 1 L., 183.

In *Casanova* vs. *Acosta*, the court said:

"This action is brought to annul and set aside the proceedings had, in the Court of Probates, in relation to the succession of plaintiff's father. They allege that their mother, who was their tutrix, made a false and fraudulent inventory of the property; that a house and lot was inserted on it as community property, when, in truth, it be-

longed to the husband; and that the other property was appraised below its real value.

Since the opening of the succession, three slaves, making part thereof, have been sold by the tutrix to one Avegno. By the petition he is made party to this suit, and the plaintiffs demand that the sale to him be annulled and declared void.

He pleaded to the jurisdiction of the Court—(of Probate)—and the judge sustained the plea. In doing so we are of the opinion no error was committed. If property belonging to the succession has passed into the hands of third persons, the courts of ordinary jurisdiction, not those of probate, must be resorted to for relief.'

And to the same effect see *Lessassier* vs. *Lessassier*, 15 L., 55.

We have already shown upon abundant authority, that the right of the legatee or devisee of specific property, to proceed by bill in equity against a collusive and fraudulent transferee, to have the transfer annulled and to recover the property, has never been controverted or drawn in question in courts of chancery.

5. There is embodied in the answer a further objection to the bill, in the nature of a plea of *litis pendentia*—that the succession of James Railey, and all controversies therein, are still open, pending and unsettled in the Probate Court of the parish of East Carroll, and that said court has exclusive jurisdiction over said succession, and all matters and controversies therein; and the orders and decrees of that court, referred to in the bill, and therein charged to have been fraudulently and collusively obtained are —in disregard of the maxim *non valet exceptio ejusdem rei cujus petitur dissolutio*—pleaded as *res judicata* in bar to the bill to avoid them.

We have already referred to authorities which show that neither of these objections is tenable. It has already been shown, that where it is alleged that, through the instrumentality of collusive and fraud-

ulent proceedings in the Probate Court, property of the succession has passed into the possession of third persons, relief is to be sought against such persons, not in the Probate Court, where the proceedings were had, but in courts of ordinary jurisdiction.

Furthermore, pleas of *lis pendens* and *res judicata*, are admissible only between those who were parties to the prior litigation. The *complainant* was no party to the proceedings sought to be set up in abatement, and in bar to her bill. Nor was the *defendant*, Wyly. On the contrary, he *specially avers* that, up to the day of the purchase by him of the Raleigh Plantation, "he was, in all things, *a total stranger*" to the proceedings in the Probate Court. Certainly he does not appear upon the face of the record, to have had any connection with those proceedings; and, if he had any, it must have been covert, collusive and fraudulent, as charged in the bill, and not of a character to enable him to invoke the probate record to sustain a plea *lis pendens* or *res judicata* in his behalf.

In *Trichel* vs. *Bordelon*, 9 R., 191, the court said:

"Arts. 604 to 613, C. P., authorizing actions to annul a judgment, confine them to the parties to a judgment, and restrict them to the court before which they had previously been litigating; but where a creditor seeks to annul such a judgment, it must be brought before a court of ordinary jurisdiction. It is a revocatory action, of which courts of probate are without jurisdiction."

Choppin vs. *Forstall*, 28 A 303, was an action by heirs to recover specific property from parties in possession and claiming title under probate sales, charged by plaintiff to have been collusive and fraudulent.

The plaintiffs alleged that, for a certain purpose stated, the firm of E. J. Forstall & Co., caused

mortuary proceedings to be had in the succession of Choppin, which were collusive and fraudulent, and obtained a decree for the sale of two certain plantations; and that, under such decree, a simulated and fraudulent sale of property was made by the sheriff to E J Forstall & Co.; and that under said sale the defendants, after the death of E. J. Forstall, took possession of one of said plantations, and, by a fraudulent and simulated notarial act, transferred it to the succession of said E. J. Forstall; and they prayed that the sheriff's sale to E. J. Forstall & Co., and the notarial transfer to the succession of E. J. Forstall, of one of the plantations, be annulled, as simulated and fraudulent, and that they be decreed the owners of said property, and that they recover of defendants a specified sum as revenues of the plantation.

The suit was brought in the *District* Court, and, among other exceptions interposed by the defendants, was one to the effect that the District Court was "incompetent, *ratione materiæ*, to pass upon and decide the issues presented in the petition, because it seeks the avoidance of acts performed under the decrees of another tribunal.

The District Court sustained the exception, and dismissed the case for want of jurisdiction. The plaintiffs appealed, and the Supreme Court said:

"We think the court erred. The action is one to recover property, and the value being sufficient, the District Court has jurisdiction, under the constitution and laws now in force. In determining the validity of the sales in question, that tribunal has power to say whether or not the alleged proceedings in the Probate Court are valid, and sustain or annul the sales complained of, without formally annulling or sustaining the said judicial proceedings. All that the plaintiffs ask in this respect is the annulment of the sales, and to have this done it is not necessary, as contended by defendants, to obtain a judgment annulling the judicial proceedings, and decrees resulting in the sale of the property."

In *Psyche* vs. *Paradol*, 6 La. 366, before referred to, which was a suit by a particular legatee to recover specific property comprehended in the bequest, from a third person, who was in possession of the property and asserted title to it, under a probate sale made by order of court at the instance of the executor, it was contended on behalf of the defendant that the plaintiff could not maintain her action of revendication; because, prior to the institution of the suit, a final judgment was rendered by the Probate Court, contradictorily with her, she being duly represented by a *curator ad hoc*, by which judgment the account of the executor of the administration of the estate of the testator was approved and homologated by the court, and that it was therein stated that the property now sought to be recovered had been sold by order of Court, and that the proceeds of the sale were set forth in the accouut, which showed a balance due the present plaintiff, which, by the judgment, was ordered to be paid to her with interest; that no appeal had ever been taken from this judgment and that it had acquired the force of *res adjudicata*, and that, if plaintiff ever had any ownership in the property, she had been divested of it by virtue of said judgment.

The Court said:

"The plaintiff sues to recover a negro woman and her increase, bequeathed to her by the will of M. E. de la Hogue, as a specific legacy. * * The slave was sold by the executor, and after sundry conveyances, came into possession of the present defendant, who sets up title under the sale.

"It is clear that the proceedings of the executor in relation to the slave in question, were wholly irregular and void. But the defendant pleads that, afterwards, * * the legal representative of the executor, then deceased, had rendered an account of his administration in the Court of Probates, contradictorily with plaintiff, which

was finally homologated by this Court by a judgment, which forms a bar to this action, and has the force of the thing adjudged. * * It is contended, on the contrary, that the plaintiff was not a party to this proceeding; that no *curator ad hoc* could be appointed to represent her, but a tutor alone, regularly appointed, could represent her. * *

"It is true that the validity of judgments, not reversed or appealed from, cannot be inquired of collaterally by *either of the parties*. * * * But in this case we are of opinion that the plaintiff was not a party in any legal sense of the word, and that the judgment forms no evidence against her."

In *Pratt* vs. *Northam*, 5 Mason, 95, it was held by Mr. Justice STORY that the courts of the United States, as courts of equity, possess jurisdiction to maintain suits in favor of legatees and distributees for their portions of the estate of the deceased, and that the settlement of an administrator's account and a judgment of a State court of probates, where procured by fraud, are no bar to such jurisdiction.

STORY, J. "The first objection taken is, to the jurisdiction of the court, as a court of equity, to entertain the suit, for two reasons. The first is, that the plaintiffs have, if entitled to any, a complete remedy at law. * * * The second is, that by the law of Rhode Island the decree of a *quietus* operates as a final and conclusive bar to any further proceedings. * * * The last reason is founded on the 35th section of the act respecting intestate estates, which enacts 'that the settlement of the accounts of any executor, administrator, or guardian by the court of probate, or, in case of appeal, by the supreme court of probate, shall be final and conclusive upon all parties concerned therein, and shall not be subject to re-examination in any way or manner whatsoever."

"This language cannot be considered as giving any higher or stronger efficiency to a probable decree than a judgment possesses at the common law;

"Upon general principles, fraud avoids the latter, and the same doctrine has been uniformly applied to all instruments and proceedings, however solemn."

In *Michoud* vs. *Girod*, 4 How., 503, a bill in equity was filed, in the Circuit Court of the United States for the Eastern District of Louisiana, by some of the heirs and legatees of Claude Francois Girod against a number of persons in possession of property of the estate, and claiming title thereto under sales thereof

made by order of the Probate Court, at the instance of the testamentary executors. The bill was to avoid the proceedings and judgment of the Probate Court, and the sales thereunder, through which the defendants claimed title, and to recover the respective shares of the complainants in the estate.

The Supreme Court, being satisfied that the proceedings and decrees of the Court of Probate complained of in the bill were the result of collusion and fraud, as charged, had no hesitation in setting them, and the sales made under them, aside, and accorded to the complainants the relief sought by the bill—p. 562.

Again, in *Gaines* vs. *Hennen*, 24 How., 553, the claimant, by bill in equity, claimed as legatee, certain property of the testator's estate which had passed into the possession of the defendants, who claimed title thereto through mesne conveyances from sales thereof, made under decree of the Court of Probate at the instance of executors.

At p. 505, the Court said:

"Several immaterial or formal points were made in the argument to defeat the claims set out in the bill. Such as that the case was not one for equity jurisdiction, but was *ratione materiæ* exclusively cognizable before the Probate Court of New Orleans. * * Again, that the probate proceedings in the Second District Court of New Orleans *are yet pending and undetermined*, and on that account that the said Court has exclusive jurisdiction over the estate of Daniel Clark. We have examined these formal objections and found them unsustained by the cases cited in support of them."

We have already shown, that in Louisiana, relief will be afforded, in courts of ordinary jurisdiction against proceedings and judgments of Courts of Probate, where effected by fraud and collusion, as charged against the proceedings complained of in the bill in

this case. Were it otherwise, however, the *equity jurisdiction of the Federal Courts* would still be adequate to afford relief, in cases where it had jurisdiction of the suits by reason of the *citizenship of the parties*. The equity jurisdiction of the Courts of the United States is not affected, nor its remedies limited by State practice or legislation. It is the same in all the States, and is co-extensive with the jurisdiction of the High Court of Chancery, as it existed in England at the time of the adoption of the Federal Constitution.

Payne vs. *Hook*, 7 Wall., 425, and cases there cited.

Dupuy vs. *Bemiss*, 2 A., 509.

In *Payne* vs. *Hook*, the Supreme Court said :

"The jurisdiction of the Circuit Court of Missouri, to hear this cause, is denied, because in that State exclusive jurisdiction over all disputes concerning the accounts or duties of administrators until final settlement, is given to the local county court, which is the Court of Probate; and as the administration complained of *is still in progress* in the county court of Calloway county, resort must be had to that court to correct the errors and frauds in the accounts of the administrator.

"The theory of the position is this, that a Federal court of chancery, sitting in Missouri, will not enforce demands against an administrator or executor, if the court of the State having general chancery powers, could not enforce similar demands. In other words, as the complainant, were she a citizen of Missouri, could obtain a redress of her grievances only through the local Court of Probate, she has no better or different rights because she happens to be a citizen of Virginia.

"If this position could be maintained, an important part of the jurisdiction conferred on the Federal Courts by the Constitution and the laws of Congress, would be abrogated. As a citizen of one State has the constitutional right to sue a citizen of another State in the courts of the United States, instead of resorting to a State tribunal, of what value would that right be if the court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress? But this objection to the jurisdiction of the Federal tribunals has heretofore been presented to this court, and overruled."

6. It is further objected, in the answer that complainant is precluded from obtaining the relief sought

by the bill by reason of her not having tendered to Wyly the price claimed to have been paid by him for the Raleigh Plantation.

In *Shelton* vs. *Tiffin*, 6 How., 185, a bill in equity was filed by the complainant, in the Circuit Court of the United States for the Eastern District of Louisiana, against a purchaser at a judicial sale, to avoid the sale for fraud, and one of the questions involved was, whether, under the law of Louisiana, the purchaser was, upon the avoidance of the sale, entitled to be paid, or credited with, the price paid by him at the judicial sale? Mr. Crittenden, for the complainant, appears (p. 183), virtually, to have conceded the point, but, notwithstanding this, the Supreme Court of the United States considered otherwise, and said :

"No deduction will be made * * for the five thousand dollars which Samuel Anderson may have paid to Mosely and Bouldin, under whose judgment he purchased the mortgage debt. He has received from the planta ion, while in possession of it, more than that sum. But if this were not the case, his fraudulent act in the transfer of the Mississippi note, is a sufficient ground for a refusal of the credit."

In a very late decision, *Gillespie* vs. *Twitchell*, 34 A. 299, the law of Louisiana applicable to the case in this aspect, is distinctly and emphatically declared by the Supreme Court of the State. In that case it was held, that, where plaintiffs aver that they were deprived of their property by fraudulent conspiracy. and received no part of the proceeds, tender of the price paid is not requisite to enable them to recover the property from the fraudulent purchaser.

The court said :

"The evidence fails to show that either Mrs. Gillespie or her children ever received one dollar from the sale of their property, and, in

view of this, their alleged liability to Twitchell, so gravely urged, to tender restitution of the amount paid out for the property, not to them, but to one or for one he was assisting in despoiling them, seems to us out of reason. They received nothing, and they have nothing to restore, or offer to restore."

7. It is further objected in the answer that the complainant's right of action is barred by the prescription of ten years by the law of Louisiana; and the prescription of five years established by Art. 3542 of the Louisana Civil Code is also pleaded.

The language of the answer setting up the latter plea is:

"And said defendant having purchased said property at a public sale made by a person authorized to sell at public auction, this defendant, as against all supposed and alleged informalities connected with or growing out of said public sale, pleads prescription of five years, as enacted in Art. 3542 of the Civil Code of Louisiana, and other statutes of said State relating thereto."

By reference to the Art. 3542, it will be seen to have no relevancy to informalities connected with or growing out of public sales; but the next article, 3543, does relate to such informalities, and establishes, as to them, a prescription of five years; and it was doubtless the prescription of this article which was intended to be pleaded. The article specified, 3542, relates to actions to rescind or annul contracts, and for the reduction of excessive donations, by parties to contracts, and has no application to this case.

In regard to Art. 3543, it is sufficient to say that a total defect of citation or notice to the party to be affected by a judgment, is not a mere informality or irregularity, but is of the very essence of the existence of any valid proceeding or judgment. Such entire defect of citation or notice does not come within

the scope of the rule of prescription enacted by Art. 3543; nor do defects in judicial proceedings or sales attributable to fraud and collusion of parties invoking the prescription.

Morton vs. *Reynolds*, 4 R, 26.
McCluskey vs. *Webb*, Ib. Id., 202.

In connection with this prescription of five years, the answer invokes also the prescription of ten years in the following words:

"And, further answering in this behalf, said defendant saith, that he acquired said property in good faith, in the year 1868, by a just title, legal and sufficient to transfer said property, and has in good faith held undisputed possession of the same since October, 1868, believing himself to be the true, lawful owner thereof in full title; wherefore said defendant pleads as a further defence herein, that said complainant's action, even if it were sufficient in equity, is prescribed against by the lapse of five years since said alleged right of action arose, and by the lapse of ten years since said alleged and supposed wrongs, and purchase and possession of said property, under and by the provisions of the statutes of the State of Louisiana, in full force and effect at all times since the year 1867, and before that time."

The averment of *good faith* in the purchase and possession by Wyly, of the Raleigh plantation, is essential to the maintenance of this plea of prescription of ten years.

In *McCluskey* vs. *Webb*, 4 R. 205, the Court said:

"In order to invoke the prescription of ten years, it is not enough to show a translative title, accompanied by a possession of ten or twenty years. Good faith is an essential requisite, and must have existed at the commencement of the possession. It is good faith alone which, in the eye of the law, purifies the title of its defects, and causes the possessor under a just title to be preferred to the true proprietor, who has remained so long silent and neglectful of his rights. * * * As to the prescription of five years established by the Act of 1834, now embodied in Art. 3543, Rev. C. C., "we have heretofore held, and have no reason to doubt the correctness of our determination, that it covers only informalities in the manner of advertising and making public sales."

The case of *Gaines* vs. *New Orleans*, 6 Wall., 642, came before the Supreme Court of the United States at the December term, 1867. It was a bill in equity filed by Mrs. Gaines in the Circuit Court of the United States for the District of Louisiana, in 1856, against certain defendants, in which she sought to recover real estate situated in New Orleans, and which belonged, as she alleged, to Daniel Clark, her father, who died in 1813, and to which she claimed title as universal legatee under an alleged will of his, averred to have been made in 1813.

The answer of the defendants admitted the possession in them of the property claimed in the bill, and that the legal title thereof was in Clark at the time of his death, in 1813, but they set up, among other matters of defense, that the legal title passed to them or their grantors, by virtue of sales thereof, made by the executors of a prior will of 1811, which had been admitted to probate: they also pleaded the prescription of five, ten, twenty and thirty years, and that they were "purchasers in good faith, without notice, for a valuable consideration."

The court, at p. 715, said:

"The defendants, as a further defense to this action, say they are purchasers in good faith, for value, without notice, or have acquired titles from those who were, and will, therefore, be protected by a court of equity. We cannot see, in view of the discussion already given to this case, how this plea can be true; but, as it cannot avail the defendants *if true*, it is unnecessary to discuss the evidence further, in order to ascertain whether it is true or false. For the question at issue in this case is only on the legal title. The complainant insists that she has that title, and if so, her right to enforce it is very clear. On the contrary, the defendants conceding that Daniel Clark, the father of complainant, had the title when he died, say it has been divested by sales made under the will of 1811, either by the executors or by Mary Clark, the instituted heir, and that they now hold it.

"In deciding the issue thus presented, the defense that, although the sales were irregular, those who bought the property did it in good

faith and without notice, and are protected, cannot avail the defendants, unless accompanied by the plea of prescription.

"As we have said in a previous part of this opinion, all that the law of Louisiana has done to protect one who has bought property in good faith, although it shall turn out that the property belongs to another person, is to give him the benefit of the bar of time prescribed by the Code. If the complainant was endeavoring to establish an equitable title, this court, if it saw proper to do so, could refuse to her the use of the peculiar powers of a court of chancery, in aiding to establish it against the purchaser of the legal estate, who had acquired it fairly and honestly. As she is not doing this, but is contesting her right to the legal estate, we cannot see how, either in a court of law or equity, she can lose that right because the defendants have purchased, in good faith, what they supposed was the legal title.

"This brings us to the only remaining defense which we shall notice, and that is the bar by prescription. In this connection the question of good faith is always important. The law, in its liberality, so far protects every honest and fair buyer of real estate, that it limits the time in which actions shall be brought against him to oust him of his possession. But the title of complainant is not barred by prescription according to the law of Louisiana. This defense was made in the case of *Gaines* vs. *Hennen*, so often referred to, and disposed of adversely to the defendant, and is no longer an open question in this court."

Gaines vs. *Hennen*, 24 How., 554, was a case of a complainant in a bill in equity claiming as legatee under an alleged will, property of the testator from the defendant, who was in possession, and claimed to derive title thereto through mesne conveyances from a probate sale; and among the grounds of defense relied on were, that the defendant, and those under whom he claimed, were purchasers for a valuable consideration without notice, and that the right of action, if any ever existed, was barred by prescription.

The court, p. 569, said:

"After the interruption of the prescription by the filing of the bill by complainant, the defendants could no longer claim to be in possession *in good faith*, as that is defined by the Civil Code. In article 3415. the possessor in bad faith is he who possesses as master, but who assumes this quality when he well knows that he has no title to the thing, *or that his title is vicious or defective*. The possessor must not only not be in bad faith, but in the positive belief that he is the true owner, and, *if he doubts the validity* of his title, his possession is not

the basis of prescription. Troplong, Prescription, Vol. 2, p. 451, No. 927; Ib. p. 444, No. 918, Ib. p. 442, No. 915. The plea of prescription is not available in this case."

And in *Gaines* vs. *Delacroix*, 6 Wall., 720, which was likewise a case where complainant, by bill in equity, sought to recover, as legatee under a will, property in possession of defendant, claiming to derive title thereto from a probate sale, the court said:

"It is contended by Delacroix that his titles derived from the purchases from Relf are valid, because he purchased within the year, while the functions of the executors were in full force. This is true, if he purchased in good faith, and the requisites of the law on the subject of the sales of succession property were complied with. * * * Executors could only sell at public auction, after due advertisement of the property, and the purchaser at a forced sale did not acquire a good title, unless the formalities prescribed by law for the alienation of property were observed. * * * But Relf, as executor, did petition the Court of Probate, on the day that letters testamentary issued to him, for leave to sell the movable and immovable property of the succession, and the order was granted for the sale to take place, according to law. It may be the effect of the sale, under the circumstances, would confer a good title, if the purchaser bought in good faith; but Delacroix got the property in bad faith, and the vice of his title cannot be cured, even if the sale were in all respects regular; nor can the plea of prescription help it."

In *Michoud* vs. *Girod*, 4 How, 503, already referred to, a bill was filed by legatees against parties in possession of property of the testator's estate, who claimed title thereto under certain proceedings, judgments, and sales of the Probate Court, which the bill sought to have avoided for fraud. The proceedings, judgments and sales complained of occurred in 1814, 1815, and 1817, and the bill to avoid them and recover the property was not filed until in or *after the year* 1840.

Eustis, for defendants (plaintiffs in error), contended, *inter alia*, that:

Claude Girod died in 1813, leaving a will made in 1812, and the sales complained of took place in 1814.

The commencement of the adverse possession, and the uninterrupted, exclusive and notorious enjoyment of the revenues of the estates being fixed by the complainant's own bill, the first ground of defense is, the entire want of equity in the complainant's case arising from the silence, acquiescence and laches of the complainants, since 1814. (Nicholas Girod died in 1840, and the bill was filed after his death.)

The defendants rely upon prescription as a defense. Nicholas Girod purchased and possessed the estates mentioned in the bill since 1814. He acquired to them a complete title by prescription under the laws of Louisiana. His acts of conveyance were public and authentic, and duly recorded in the proper offices; and the counsel cited several articles of the Civil Code as sustaining the plea.

The court said, p. 553:

"* * An executor or administrator is in equity a *trustee* for heirs, legatees and creditors." * * And at page 560: " * * Nor do we think the complainants have lost their rights by negligence or by the lapse of time. * * In a case of actual fraud courts of equity give relief after a long lapse of time, much longer than has elapsed in this instance since the executors purchased the testator's estate. In general, lapse of time is no bar to a trust clearly established to have once existed: and where fraud is imputed and proved, length of time ought not to exclude relief. * * * Still, within what time a constructive trust will be barred must depend upon the circumstances of the cases. * * * There is no rule in equity which excludes the consideration of circumstances, and in a case of actual fraud, we believe no case can be found in the books in which a court of equity has refused to give relief within the life-time of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or become known to the party whose rights are affected by it.""

The authorities already referred to, establish that, in order to afford a basis for prescription as possessor in good faith, under title translative of

property, the judicial sale at which the purchase was made must have been under a judgment of a court having jurisdiction of the proceeding in which the judgment was rendered. And in order that jurisdiction may attach, it is *essential* that there should be service of citation, or notice upon the necessary parties defendant. In default of such service, or of the voluntary appearance of the parties to be affected by the judgment, such judgment when rendered is an absolute nullity, as are all subsequent proceedings dependent upon it for their validity.

Tested by this rule, the judgment destituting F. W. Boyd from the executorship, and all subsequent procedings to which a lawful representative of the succession of James Railey was a neccessary party, are absolute nullities by reason of the absence of notice or citation to said Boyd, personally or through a curator appointed to represent him; and the decree ordering the sale of Raleigh Plantation is likewise an absolute nullity, for the further reason, that at the time of the decree, and of the sale under it, the property was the property of Mrs. Mary E. R. Boyd, the complainant in this cause, who was an indispensable party to any such proceeding, but who was never made a party thereto by service of process or otherwise.

By the textual provisions of the Code of Practice, Arts. 1017, 1018, it is essential to the validity of a proceeding to remove an executor, that the action should be commenced by petition and citation, and be conducted in the usual form.

Actual notice to an executor of the application to remove him, even by service upon him of a rule to

show cause, is not a compliance with the requirements of the law.

In *Succession of Calhoun*, 28 A. 323, a creditor took a rule on the administrator to file an account and in default thereof to show cause why he should not be removed. The administrator filed an account, which he prayed should be advertised and homologated. Thereupon the creditor filed another rule averring that the administrator had not filed an account, but a tableau of debts, and praying that he be now dismissed for not complying with the order of the court, and the mover be appointed administrator of the succession.

The administrator excepted to the proceedings by rule on the ground that the action for removal must be instituted by petition and citation as required by law. The court overruled the exception and *dismissed the administrator the second day after the rule was taken.* (In the present case no rule was taken, but a petition was filed praying for the removal of Boyd from the executorship, and without any citation or notice to him whatever, judgment removing him was rendered on the *same day* the petition was filed.) The court referring to the removal of the administrator in the *Succession of Calhoun*, said:

> "This was irregular and in violation of Arts. 1017 and 1018 of the Code of Practice, which require that the removal of curators and administrators should be by petition and citation, and the proceedings conducted in the usual form. * * If there was cause for the removal of the administrator it should have been effected in the manner prescribed by law.
>
> "All the prodeedings subsequent to the rule were irregular.
>
> "It is therefore ordered that the judgment appealed from dismissing W. S. Calhoun from the administration of the succession be reversed, *and all the proceedings thereafter be annulled*, with costs."

Wherethe executor or administrator sought to be removed has left the State, the proper mode of pro-

ceeding is to have a *curator ad hoc* appointed to represent him, upon whom service of citation can be made and contradictorily with whom the proceedings should be carried on. Such was the course pursued in *Scott* vs. *Lawson*, 10 A., 547, and in *Succession of Winn.*, 27 A., 688.

In *Succession of White*, 9 R., 353, the court, MARTIN, C. J., said:

"Ellen Beattie is appellant from a judgment which impliedly removes her from the executorship of the will of her late husband, and appoints P. M. Bertin dative executor thereof.

"The reasons on which her removal is urged are very cogent. It is alleged that, although she was appointed and was qualified as executrix upwards of three years ago, she has, nevertheless, neglected to file an inventory, or to take any steps for the execution of the will, but *has removed out of the State, to-wit, into the territory of Florida.* * * *

"A suit for the appointment of a dative executor was instituted, * * * which was followed by the appointment of Rice as such; but on his declaring his inability to qualify * * * his appointment was rescinded, and on his motion, Bertin, the appellee, was appointed in his place. This appointment was certainly illegal, and even if the legal advertisements and ordinary formalities which must follow the removal of an executor, and precede the appointment of a dative one, had taken place, the appointment of the appellee would have been bad, as the appellant had not been removed in the mode expressly provided in the Code of Practice, Art. 1,018, *i. e.*, by petition and citation."

In the *Succession of Guilbeau*, 25 A. 474, Devalcourt was administrator, and upon an *ex parte* application of some of the heirs, his appointment was *cancelled*, and thereupon, one of the heirs applied to be appointed administrator, and the application was advertised. Thereupon, Devalcourt *appeared* and *filed an opposition*, and prayed for the annulling of the order cancelling his appointment, on the ground that it was rendered without citation, notice, or legal process of any sort.

From a judgment sustaining the opposition and setting aside the *ex parte* order cancelling the ap-

pointment of Devalcourt, an appeal was taken by the party seeking the appointment.

The Supreme Court *held* that—

"The order removing the appellee, Devalcourt, *was a nullity*, having been made without citation, notice or appearance. He had been appointed, qualified, furnished bond, and caused inventories to be made, and, if there was any informality or insufficiency in such proceedings, which would authorize a removal, this could be accomplished *only* in a direct action by petition and citation. C. P. 1017, 1018.

So, in the present case, the order removing F. W. Boyd from the executorship having been made without citation, notice or appearance, was *a nullity*,—not voidable, merely, but absolutely void. Much stress is laid in the answer, upon the averment that no appeal has ever been taken from this void order, and it is claimed that, never having been reversed, it is in full force and effect as a valid judgment of a court of competent jurisdiction. But *nullity* can have *no* effect. The *effect* of it is *null—ex nihilo nihil fit;* and it is not necessary, in order to avoid the effects of it, to show, as in the case of a judgment voidable for error, that it has been set aside by the court which rendered it or reversed on appeal by an appellate court. When a judgment is absolutely null, any one having the least interest in opposing its effect, may, at any time, and in any form of proceeding, have such nullity pronounced.

In *Quine* vs. *Mayes*, 2 R., 510, the Court said:

"The Code of Practice, Art., 571, gives the right of appeal not only to those who were parties to a suit, but also to third parties, when they have an interest in the judgment, and believe themselves aggrieved by it.

"If such right exists when the object is only to show error in a judgment regularly rendered, it appears to us that a person who is to be affected by a judgment, and against whom it is set up, should, *a*

fortiori, have the right of showing *that it is no judgment at all.* * * In the case of *Bernard* vs. *Vigneaud*, 1 N. S., 9, which was a suit against a third possessor, this court said: 'A judgment rendered against a person without citing him in the ordinary manner, without his appearing, or anything deemed by law equivalent to citation or appearance, is *utterly void*, and imports such nullity that any one the least interested in opposing its effects may have such nullity pronounced.'"

In *Conery* vs. *Rotchford*, 30 A. 692, which was a suit to revive a judgment, the court said:

"Citation being the essential ground of all civil actions, in ordinary proceedings the neglect of that formality *annuls radically* all proceedings had, unless the defendant had voluntarily appeared to the suit and answered the demand, C. P., Art. 206. The nullity may be alleged *even collaterally in any form of proceedings by any one having the least interest to have the nullity pronounced.* 1 N. S. 9; 21 A. 26; *Williams* vs. *Clark*, 11 A. 761; 24 A. 252; 8 N. S. 145; 6 L. R. 577. * * *

"It is, nowever, urged by counsel that Art. 2813, R. S. and Art. 3547, R. C. C. only fix the prescription of judgments, and the mode of arresting that prescription; and that under this proceeding to revive a judgment it can not be annulled or pronounced null. That is very true as to all *relative nullities*, but not to absolute nullities, such as the want of citation, without which there was and could be neither suit nor valid judgment, as we have seen. * * * Courts of justice deal with the substance and not with the shadow of causes. It cannot be for a moment doubted that a party condemned without citation or hearing could sue to have that fact judically determined, and yet more evidently that he may use the same fact as an exception to preserve his right if sued. C. P., Art. 20. This he may do at any time the judgment so obtained is sought to be enforced against him, for any purpose or in any manner; and even if it could be held that he should bring such suit within a fixed time, as it cannot by the express terms of Art. 612 C. P., nowhere and to no class of cases is more applicable the maxium: *Quae temporalia sunt ad agendum, perpetua sunt ad excipiendum.*"

As it is not denied by the answer that Fred. W. Boyd was at one time dative executor of the will of James Railey, and as it is apparent that, for want of citation, the order removing him from office, and all other proceedings consequent thereon, are and were radically null, it is evident that he has never ceased to be sole lawful executor, and that any appointment of administrator there being no vacancy in the administration must necessarily have been

void, and that all the acts of Egelly, as administrator of the succession, are necessarily null.

In order to give the Probate Court jurisdiction to render a decree for the sale of property under administration, the proceeding must be at the instance of, or contradictorily with the heirs, or with some lawful representative of the succession. The court cannot have jurisdiction to order the sale of property unless its jurisdiction is invoked by parties lawfully entitled to do so, and unless those against whom the judgment is to have effect are notified of the proceeding by citation, or other lawful process, or voluntarily appear.

In *Boswell's Lessee* vs. *Otis*, (9 How., 350,) the Supreme Court say:

"It may be difficult in some cases to draw the line of jurisdiction, so as to determine whether the proceedings of a court are void, or only erroneous. And in such case, every intendment should be favorable to a purchaser at a judicial sale. But the rights of all parties must be regarded. No principle is more vital to the administration of justice than that no man shall be condemned in person or property without notice, and an opportunity to make his defense."

And in *Walden's Lessee* vs. *Craig*, 14 Peters, 154, the court say:

"It is admitted that the service of process or notice is necessary to enable a court to exercise jurisdiction in a case; and if jurisdiction is taken where there has been no service of process or notice, the proceeding is a nullity. It is not only voidable, but it is absolutely void."

Raleigh Plantation having been bequeathed by James Railey, as a particular legacy to his daughter, Mrs. Mary E. R. Boyd, the complainant in this cause, became under the laws of Louisiana, *her property at the instant of the testator's death.*

"Every legacy under a particular title gives to the legatee, *from the day of the testator's death, a right to the thing bequeathed*, which may be transmitted to his heirs or assigns."

C. C. 1626 (1619). "A particular legatee does not become liable to the debts of the succession by accepting the legacy, *nor is the specific property of the legacy liable for the debts of the estate, except in default of all other property, nor can it be subjected to the payment of debts at the instance of creditors except in the manner and subject to the limitations prescribed by the Code.*

"Particular legacies must be discharged in preference to all others, even though they exhaust the whole succession, or all that remains after the payment of debts and the contributions for the legitimate portion, in case there are forced heirs." C. C. 1634 (1627).

"If the effects do not suffice to discharge the particular legacies, the legacies of a particular object must first be taken out. The surplus of the effects must then be divided among the legatees of sums of money," etc. C. C. 1635 (1629).

Subsequent articles of the Code provide that if the testator has encumbered the property bequeathed as a particular legacy with mortgage, it shall remain subject to the mortgage in the hands of the legatee, who, of course, would be an indispensable party to any proceeding to enforce the mortgage.

Art. 1642 (1635) declares that:

"The legatee, by a particular title, *shall not be liable to the debts of the succession, except the reduction of the legacies*, as is before provided, and except the action of mortgage of the creditors."

We have said that the property disposed of by a testator as specific legacies can be made liable for the debts of the testator, only in the manner and subject to the limitations prescribed by the Civil Code.

That all property left by a testator at his death should be liable for the payment of his debts, before it can be applied to the satisfaction of legacies of any character, is rudimentary. But it is equally clear that the law making power may rightfully *limit a time within which the right of priority of creditors must be asserted over legatees, and prescribe the mode in which it is to be done.* And this is the purpose of Art. 1431 (1380) of the Civil Code, to

which we specially call the attention of the Court." It is as follows:

"If the testator has bequeathed more than his disposable effects amounted to, or if there does not remain sufficient property in the succession to pay all the debts, the legatees may be made to give up what they have received, above what the testator was permitted to bequeath, or the deficit necessary to discharge the debts of the succession. *

* But this action on the part of *the creditors of the succession against the legatees*, is prescribed by three years, to be calculated *from the opening of the succession.*"

The language of this article makes it too plain to require elucidation, that, if it is sought to subject specific property comprised in a particular legacy to the payment of debts of the succession, it must be done in an action *inter partes*, between the creditors and the legatee, in which the question is to be determined, whether and to what extent, it may be necessary to reduce the legacy in order to pay debts; and that if the creditors fail to bring suit for that purpose within three years *from the opening of the succession*, their right of action is barred by prescription.

We submit, therefore, that the complainant, the particular legatee of Raleigh Plantation, under the will of James Railey, was an indispensable party to any proceeding or suit by executor, administrator or creditors, to subject that property to the payment of the testator's debts; and that if she had been made party to, or notified of, the proceedings resulting in the sale of Raleigh Plantation to Wyly, *she could, beyond all question, have defeated them by the plea of prescription of three years, under Art.* 1431 *of the Civil Code.*

Doriocourt, Executor, vs. *Jacob's Executor*, 1 A., 214.

The judgment, therefore, under which Raleigh Plantation was sold to Wyly, was void for want of jurisdiction in the court which rendered it; and the sale itself a nullity, irrespective of any question of collusion or fraud. "Notice, actual or constructive, to the defendant," in the words of the Supreme Court of the United States, in *Nations* vs. *Johnson*, 24 How., 20, "is essential to the jurisdiction of all courts." As is said in *Baldwin* vs. *Hale*, 1 Wall., 233:

"Parties whose rights are to be affected, are entitled to be heard: and, in order that they may enjoy that right, they must first be notified. Common justice requires that no man shall be condemned, in his person or property, without notice, and an opportunity to make his defense.

"It is not sufficient that the judgment on which execution issues appears to be final and is perfect in form. It must be at least so far valid as to be impregnable to collateral assault. A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it, and all claims flowing out of it, are void. * * * The purchaser, at a sale by virtue of its authority, finds himself without title and without redress."

Freeman, of Executions, § 20.

8. It is further objected, in the answer, that the complainant is precluded from claiming the relief sought by the bill, by reason of the alleged fact that, at the time of the purchase of Raleigh Plantation by Wyly, the succession of James Railey was insolvent.

It appears from the will of James Railey, referred to in and made part of Wyly's answer, that the testator was possessed, at the time of his death, as owner, not only of Raleigh Plantation, but of Carondelet Plantation, in the parish of Carroll, and also

of large estates in Mississippi and Arkansas, and other property of great value.

But even if the succession of Railey was insolvent at the time of the purchase of the Raleigh Plantation by Wyly, *that* fact could not avail *him* as a defense to this suit, by a legatee in whom the legal title to the plantation was vested at the time of the sale, to avoid it as having been made through fraud and collusion for a mere nominal price, under a void judgment of a court without jurisdiction.

If creditors of the succession have any rights affecting the property, such rights would be rather advanced than prejudiced by the avoidance of the sale to Wyly, who claims to hold the property as owner, *free* from all liability for debts of the succession of Railey.

In *Gaines* vs. *New Orleans*, 6 Wall., 713, which was a bill in equity by a legatee against parties in possession of property comprised in the legacy, who claimed title thereto under probate sales, a similar plea was interposed by the defendants.

The court said:

"It is argued with earnestness that the estate of Daniel Clark was insolvent, and that the real heir cannot have it until the debts and legacies are paid. If this defense were true in fact, which it is not, it cannot avail these defendants. They are concerned to show a better title than the complainant, and if they cannot do it, are not at liberty to make a collateral issue by proving the estate in debt, more or less. If the executors rightfully sold the property in controversy they are protected, but they cannot substitute themselves for the creditors of the estate, and use them as a means to get protection. * * * We do not deny that in equity, as well as at law, the plaintiff must recover on the strength of his own title; but because this is the rule, it does not follow that he must show a good title against all the world; it is enough that he show a right to recover *against the defendant*. And there are many cases in which he has this right, although another person must recover it from him."

9. It is further objected in the answer, that the complainant is precluded from claiming the relief sought in the bill by the judgment of homologation of title in the monition suit of Wyly, specifically set forth in his answer.

If the averments in the bill are true defendant cannot protect himself in the enjoyment of the fruits of his fraud and spoliation by the effect of the process of monition, sued out by him as an innocent third purchaser, so promptly after the sale, nor can he thereby supply an entire defect of jurisdiction in the court which had ordered the sale, for want of citation or notice. A similar plea was interposed and disregarded in the case of *Gay* vs. *Morgan*, in the Circuit Court of the United States for the District of Louisiana, in which the defendant, Wyly, was of counsel *for the plaintiff*, and in which the sales, by order of a Court of Probate, of four plantations in the parish of Carroll, were annulled and avoided by decree of the Circuit Court, as having been made through fraud and collusion, for a nominal price, and this, although the titles of the defendants, acquired at probate sale, had been ratified and homologated by judgment in proceedings by process of monition.

In that case the attention of the court was called to the following authorities, which were considered conclusive on the subject:

In *City Bank* vs. *Walden*, 1 A. 46, Chief Justice Eustis, delivering the opinion in the court, said:

"The monition Act of 1834"—(re enacted in Arts. 2370 *et seq.* Rev. Stat. of La. of 1870)—"under which the present proceedings were instituted, was passed *for the benefit of bona fide purchasers* at judicial sales, to protect them from litigation, *concerning matters of form*, a

non-observance of which, by public officers, frequently exposed purchasers to unreasonable and vexatious suits. * * We do not understand the operation of this act to extend *beyond matters of form*, nor that it purports to operate in any matter *dehors* the proceedings." The same doctrine is held in *Johnson* vs. *Hamilton*, 2 A. 208; *Cordeviolle* vs. *Hosmer*, 16 L. 593; and in *Parmele's Heirs* vs. *Overton*, 12 L. 561.

10. There is embodied in the answer a general demurrer to the bill for want of equity-

It is obvious from what has already been said that this demurrer is utterly untenable. The case made by the bill is one peculiarly within the cognizance of a court of equity.

In *Gaines* vs. *Hennen*, 24 How., 565, before referred to, which was a bill in equity by a legatee against parties who were in possession of property comprised in the legacy, and who claimed title thereto under probate sales, to avoid the sales and recover the property, the objection by the defendants that the case was not one for equity jurisdiction, but was *ratione materiæ* exclusively cognizable before the Probate Court of New Orleans, was characterized by the Supreme Court as "formal and immaterial," and overruled.

In *Shelton* vs. *Tiffin*, 6 How., 185, which was a bill in equity to avoid a judicial sale upon averments of fraud and collusion, where the bill was demurred to, the Supreme Court said:

"The demurrer is clearly unsustainable. Fraud is alleged in the bill, and relief is prayed against a judgment and a judicial sale of the property in controversy. These and other matters stated in the bill show that if the complainant shall be entitled to relief, a court of equity *only* can give it."

Said the Court of Errors of New York, in *Sands* vs. *Codwise*, 4 Johns, 588.

"The *peculiar province* of a court of equity is *to detect and pursue fraudulent alienations*, and arrest the property, particularly while in the hands of any of the parties to the transaction."

Said the Supreme Court of Louisiana, in *Muse* vs. *Yarborough*, 11 L. R., 531:

"In the eye of the law, no difference exists between a voluntary conveyance of property for fraudulent purposes, and such an alienation disguised under the forms of judicial proceedings."

Said Dillon, J., in *Martin* vs. *Smith*, 1 Dill., 85:

"Equity looks at substance and not at form. It penetrates beyond externals to the substance of things, and delights to brush away barricades of written articles and formal documents, when satisfied that they have been devised to conceal or protect fraud."

It is specifically charged in the bill in this cause, that not only was the sale to Wyly made under proceedings and judgments which were void for want of citation or notice to the parties to be affected by them, but that the sale is void on the further ground of fraud and collusion attending it; and one of the facts specifically alleged in this connection is, that the sale was made for a price altogether inadequate and grossly out of proportion to the value of the property. In reference to the language of the bill in which this charge is couched, Wyly, in his answer, says:

"That so much of said bill as avers that the vileness of the price for which said plantation was adjudicated, is a flagrant badge of the unreal and fraudulent character of the transaction, is *scandalous, bad pleading*, and false and untrue."

The truth or falsity of the averment is to be determined upon the evidence adduced. If true, however scandalous the transaction itself may have been, it is certainly not bad pleading to aver its true character

in plain English. Whatever view the defendant may choose to take of it, inadequacy of price is certainly regarded, in the light of equity jurisprudence, as one of the ordinary *indicia*, or badges, of bad faith, collusion and fraud.

The inadequacy of the price may be so gross—as in the case averred in the bill in this cause—as to shock the conscience, and amount, in itself, to conclusive and decisive evidence of fraud.

Coles vs. *Trecothic*, 9 Ves., 246;
Underhill vs. *Harwood*, 10 Ves., 219;
Copes vs. *Middleton*, 2 Maddocks, 409.
Stillwell vs. *Wilkinson*, Jacob, 280;
Peacock vs. *Evans*, 16 Vesey, 512;
Gwynne vs. *Heaton*, 1 Bro. Ch., 9;
Osgood vs. *Franklin*, 2 Johns, Ch., 23 and 14 Johns, 527.

While inadequacy of price is not, *per se*, sufficient ground to set aside a conveyance, except where it is so gross and shocking as to be, in itself, conclusive evidence of fraud, yet it is always an important, and often a decisive circumstance to be considered in determining the true character of a transaction charged to be collusive and fraudulent.

In Perry on Trusts, § 810, it is said that:

"Where property is sold for *a nominal price* only, or at a *fraudulent undervaluation*, or the purchaser knows that the executor intends to misapply the money, and the sale is made for that purpose, the sale cannot stand; and in all such cases where where there is *fraud, or suspicion of fraud*, the transaction may be investigated and impeached by creditors, or by *specific*, pecuniary or residuary *legatees*, if they are injured in their rights."

In *Scott* vs. *Tyler*, 2 Dickens, 725, LORD THURLOW said:

"It is of great consequence that no rules should be laid down here which may impede executors in their administration, or render their administration of the testator's effects unsafe or uncertain to the purchaser. * * * But fraud and covin will vitiate any transaction and turn it to a mere color. If one concerts with an executor by obtaining the testator's effects at *a nominal price, or at a fraudulent undervaluation, or by applying the real value to the purchase of other subjects for his own behoof, or in extinguishing the private debts of the executor, or in any other manner contrary to the duty of the office of executor*, such conduct will involve the seeming purchaser and make him liable for the full value."

Shelton vs. *Tiffin*, 6 How. 185, which has been before referred to, is in point to show the view taken by the Supreme Court of the United States of inadequacy of price as indicative of fraud, and also in point as to nullity of a judicial sale made under a judgment which is void for want of citation to the party to be affected by it.

The plaintiff in that case filed a bill in equity, in the Circuit Court of the United States for the Eastern District of Louisiana, to avoid a judicial sale made under a judgment which the complainant alleged to be void as to him for want of citation. There had been an appearance in his behalf by an attorney who undertook to represent him; but the Court allowed proof to be made that such appearance was without warrant from complainant.

The Court said:

" * * The judgment, therefore, against L. P. Perry must be considered a nullity, and consequently did not authorize the seizure and sale of his property. An execution sale under a fraudulent judgment is valid, if the purchaser had no knowledge of the fraud. But in this case, L. P. Perry was *not amenable* to the jurisdiction of the Court, and did no act to authorize the judgment. *He, therefore, cannot be affected by it or by any proceedings under it.* * The judgment being void, for want of jurisdiction in the Court, no right passed to Samuel Anderson under the Marshal's sale. * "

The complainants had sold to Anderson a plantation in Madison Parish, Louisiana, for seventy-five

thousand dollars. Thirty-five thousand dollars of this sum were paid, in part, by the surrender by Anderson of a note against the complainant, Perry, held by Anderson, for thirteen thousand dollars; and the residue of the thirty-five thousand dollars by the transfer by Anderson to Perry of a note of other parties, payable to Anderson, for eighteen thousand two hundred and eighty-two dollars, from which nothing appears to have been realized. For the residue of the purchase money, forty thousand dollars, Anderson gave his three promissory notes, secured by mortgage on the plantation purchased by him from the complainants; and this mortgage debt so due by himself, he bought in at Marshal's sale for five thousand dollars, on twelve months' credit, under the judgment against Perry which was held by the Supreme Court to have been void for want of citation, in the passage, from the opinion of the court quoted above.

Touching the inadequacy of the consideration given by Anderson in the transaction, the court said:

"The history of this case shows a successful course of fraudulent combination rarely exhibited in a court of justice. Samuel Anderson purchased the plantation and slaves for seventy-five thousand dollars. He gave up a note of L. P. Perry for thirteen thousand dollars, which was in fact *the only payment of any value.* The Mississippi note was worthless, and the mortgage debt 'due by himself' he purchased on a credit of twelve months for five thousand dollars. He must have received more than that sum in the product of the plantation. So that in fact he acquired the plantation and negroes *for thirteen thousand dollars.* By this operation he saved of the purchase money sixty-two thousand dollars. *Such a result must strike every one as having been procured through fraud.*"

The inadequacy of the price in this case was not a more flagrant badge of the fraudulent character of the transaction, than is the vileness of the price

claimed to have been paid by Wyly for Raleigh Plantation of the true character of that purchase.

We submit, therefore, that the bill exhibited in this cause not only states a case entitling complainant to relief in a court of equity, but an exceptionally strong case; and that, furthermore, it has been shown, upon ample authority, that there is nothing in any or all of the numerous technical objections which have been interposed to preclude the court from dealing with the cause upon its merits, and affording to the complainant the measure of substantial justice to which she is entitled.

It remains only to be considered whether, and to what extent, the case stated in the bill is made out by the admissions in the pleadings and the proofs adduced; and this brings us to an examination of the

Cause on the Merits.

On the 3d of November, 1860, Sparrow and Montgomery, as attorneys for James G. Carson, filed in the District Court of the Parish of Carroll a petition (p. 347–8) setting forth that, in September of that year, James Railey died, leaving in that parish a large estate, consisting of land, slaves and other property; that at the time of and long prior to his death he resided and was domiciled in Adams County, Mississippi; that at his death he left a will, by which he disposssd of all his property in this State and elsewhere, and that the will had previously been admitted to probate and ordered to be executed by the Probate Court of Adams County, Mississippi, the domicile of decedent; that by the will the petitioner, Carson, had been named executor thereof, in so far as the

same involved the administration of the property in this State; and he prayed that the will be admitted to probate in the said court, and that letters of executorship, as to the estate in Louisiana, be granted to him, which was done.

By the terms of the will (pp. 16-17) and otherwise, it appears that decedent died the owner, not only of the estate in Louisiana, but of large and valuable estates in Mississippi and Arkansas, which were disposed of by the will; and, also, that he owed debts which the will contemplated should be paid out of the revenues of the property, which are, in the will, assumed to be adequate for the purpose, without sale of any of the property comprehended in the will. Whatever debts there were, were manifestly not chargeable against the estate in Louisiana *solely*, but against the succession generally, including the estates in Arkansas and Mississippi. The administration in Mississippi, and at the last domicile of deceased, where his succession was first opened, was properly the main administration, and those in Louisiana and Arkansas only ancillary thereto.

Sparrow and Montgomery—J. W. Montgomery appearing to be the acting member of the firm in regard to the matter throughout—appear to have been the attorneys of the estate in Louisiana, at every stage of its administration, except when F. W. Boyd was dative executor, with which administration, as will be shown, they were not altogether disconnected. Throughout all the mortuary proceedings in Carroll Parish, under the professional supervision and direction of Sparrow and Montgomery, no trace is anywhere found of any objection having been made to any and all alleged debts of the decedent being sad-

dled solely on the property under administration there, consisting mainly of the Carondelet and Raleigh Plantations, both of which had been specifically disposed of as particular legacies, by the will. The first, without any contradictory proceedings for the purpose being had with the particular legatee, H. O. Railey, was sold to satisfy a mortgage debt with which it was encumbered; and the second, Raleigh, was sold, ostensibly, for the purpose of paying debts of the general estate; and the proceeds of the sale, it is claimed, actually and entirely applied, to the payment in part of a judgment for a fee due to Sparrow and Montgomery, *for their professional services to the estate*, and the residue to pay the costs of the proceeding.

Upon the granting of letters of executorship to Carson, in 1860, an inventory of the property of the estate in Carroll Parish was made, whereby the lands of Raleigh Plantation were appraised at $119,395, (p. 353) and those of Carondelet Plantation at $92,-800. (p. 361.) With the value of slaves and movables added, the aggregate value of the estate in Carroll Parish amounted, by the inventory, to $432,233.25. (p. 366.)

On the 28th of September, 1865, Frederick W. Boyd, the husband of complainant, filed his petition in the District Court of the Parish of Carroll, stating that James G. Carson, executor, as aforesaid, had died during the year 1864, and praying that letters of dative executorship should be granted him, which was done accordingly. (p. 376.)

Prior to this application being made, J. W. Montgomery had addressed a letter, dated Floyd, La., July 27th, 1865, to the complainant, Mrs. Boyd, at

Natchez, Miss., which is in evidence as Exhibit "D," (p. 270) and from which the following are extracts:

"MADAM—In association with Gen. E. Sparrow, I have been heretofore representing (as attorney) the executor of your late father's will. You have, of course, been informed of the death of Dr. James G. Carson, who was executor, and who, up to the invasion of the country, had possession of the succession in this Parish."

The letter then goes on to explain, in detail, to Mrs. Boyd, what had been done by the executor in relation to the property entrusted to his administration, in accordance with professional advice given him by the writer, and then says:

"In order to hire the services of the negroes next year, on the plantations up here, it will be necessary that another executor should be appointed. * * The proper person for that place must be determined upon by the heirs of the estate. * * * It has been suggested that you were the proper one for me to correspond with on this subject, and I should be pleased to know the wishes of the family respecting the matters alluded to. * * "

Afterwards, on the 14th of September, 1865, J. W. Montgomery addressed another letter to the Rev. F. W. Boyd, at Vicksburg, Mississippi, in reference to his qualifying as dative executor, in which, among other things, he says: "I do not think you will meet with any serious difficulty,in giving bond for your administration upon the estate of Railey," and the letter advises him how to proceed in the matter. Vide Ex. 'C.' (p. 269.)

These letters indicate that Judge Montgomery fully recognized the fact that the complainant, Mrs. Boyd, was a proper party to be communicated with, and dealt with in matters relating to the administration of the succession of her father in Carroll Parish, and that he had no difficulty in communicating with her and her husband, in Mississippi,

upon the subject. The evidence shows that they could have been as readily communicated with, personally, by letter, by Judge Montgomery, or by a *curator ad hoc*, had any been appointed, in relation, to the proceedings had thereafter in the succession in the Parish of Carroll, in the summer and fall of 1868. It does not, however, appear to have been consonant with the purpose of those proceedings that either she or her husband should have had any notice of them.

F. W. Boyd having been appointed dative executor, on the 28th of September, 1865, and having qualified by giving bond with surety to the satisfaction of the Court, (p. 377) in the sum of $30,000, another inventory and appraisement (pp. 380–1) of the property of the succession was made on the 16th day of July, 1866, the appraisers being D. L. Mory and Geo. S. Wilson whose competency to make the appraisement, and honesty in doing so, are specially averred in the bill, and not denied or called in question by Wyly in his answer.

According to this inventory and appraisement, the lands of Raleigh Plantation were inventoried as amounting to 1,739 acres, more or less, and appraised at $55.00 per acre—the whole plantation being valued at $95,645.00 ; and Carondelet Plantation was inventoried as containing 1,160 acres, more or less, and appraised at $45.00 per acre—the whole plantation being valued at $52,200.00.

On the 29th of August, 1866, a petition (pp. 286–8) was filed by Sparrow and Montgomery, as attorneys of G. Malin Davis, of Mississippi, for the use of Elizabeth Davis ; of August Belmont, of New York ; A. and M. Heine, of New Orleans ; the Citizen's Bank of

Louisiana; the E. Carver Company, of Massachusetts, and J. S. and R. E. Neal, of Madison, Indiana, in which it was represented that the succession of James Railey was indebted to G. Malin Davis for the use aforesaid, in the sum of twenty-nine thousand dollars, and interest, less certain specified credits, secured by special mortgage on the Carondelet Plantation ; and to August Belmont, in the sum of fifteen thousand dollars, with eight per cent. per annum interest thereon, from 15th January, 1862, secured by special mortgage on a part, 640 acres, of the Raleigh Plantation, and to the other petitioners in certain other sums stated ; that said succession was opened in said court by the appointment and qualification of F. W. Boyd, as dative testamentary executor of the last will of the said James Railey ; that all of said claims had been admitted by the executor, and ranked by the judge among the acknowledged debts of the succession.

The petition prayed that the said dative testamentary executor "may be cited" and ordered to render an account, and in default thereof, *that he may be destituted of his letters* of executorship, and another executor be appointed in his stead ; that the property of said estate may be sold in due course of law to pay said debts, and that out of the proceeds thereof the said mortgage debts may be respectively paid by preference, and the other creditors concurrently.

On the filing of this petition an order (p. 288) was entered the same day, requiring the executor to file an account within ten days from service of the order; and citation was issued, with a copy of the petition and order, and service thereof, made, as shown by the

sheriff's return, on the 11th of September, 1866, by handing the same "to George Harrison, a free white person over the age of fourteen years, residing on the front Railey place in the parish of Carroll, La.; that being the place claimed as the residence of said Frederick W. Boyd, executor, he being absent from home at the time of service." (p. 289.)

In this exhibit 'N' (p. 286,) filed on behalf of defendant, and purporting to be a transcript of the proceedings in suit entitled, Creditors of Railey vs. Succession of James Railey, No. 5104, there appears an entry "that it being made to appear that the said succession of Railey is vacant and unrepresented, and all the heirs being non-residents, and the District Judge being absent from the parish at this time, it is ordered that H. W. Drake be appointed *curator ad hoc* in this case," (p. 299,) which order purports to be signed by the Parish Judge. It does not appear, however, *when* the order was made, at whose instance, or how it was made to appear that the succession was vacant and unrepresented. Nor does it appear that any citation or notice of any kind was ever served upon said Drake as curator.

On the 13th of October, 1866, judgment (p. 300) was rendered in this suit, confirming a default, and ordering that a writ issue to the sheriff to sell property sufficient to pay plaintiff's demands, and ordering that the property mortgaged to G. Malin Davis, which was the Carondelet Plantation, and the property mortgaged to August Belmont, which was a part of the Raleigh Plantation, should be specially seized and sold to pay those debts respectively, and that if any surplus should remain after paying those debts,

it should be applied to the payment of the ordinary creditors, mentioned, *pro rata.*

Nothing was said in the judgment about destituting F. W. Boyd from the dative executorship, for failing to render his account or any other cause.

Under this judgment, a writ of sale (p. 301) issued to the sheriff, dated the 20th of December, 1866, upon which the sheriff afterwards made return, (pp. 301-2,) that he had received the writ on that day, and on the same day executed it by seizing the property described in the writ, which was the two plantations, Carondelet and Raleigh, and by serving notice of seizure—not on the pretended curator, Drake—but "on James Erwin, a free white person, above the age of fourteen years, residing at the residence of F. W. Boyd, executor, on the front Railey Plantation, in the parish of Carroll, he being absent from home at the time of such service, said service being made on the 24th of December, 1866." The return goes on to state that the property was advertised for sale on the 2d of February, 1867, for cash, with benefit of appraisement, and that on said day, at the place and hour appointed, the defendant, having failed to appear and select an appraiser, the sheriff selected one appraiser, and the attorney for the creditors another, who are named, who, thereupon, appraised the Carondelet Plantation, containing 1160 acres, *at* $39 *per acre, amounting to* $45,240. That the Raleigh property was not appraised or sold, "having been released from seizure by order of plaintiff's attorney on the day of sale." That the Carondelet Plantation was on that day offered "for sale at public auction to the highest bidder, whereupon G. Malin Davis, by his

attorney, John W. Montgomery, became the purchaser thereof for the total *price and sum of* $45,240," * * * for which amount the execution was returned satisfied.

This sale was on the 2d of February, 1867, and the next proceeding had in the succession of Railey was in the filing, by the 18th of March, 1367, of a petition by William Craig and James E. Erwin, (pp. 267-8,) claiming that they were acknowledged creditors of the succession, and praying for a rule on F. W. Boyd, as dative testamentary executor, requiring him to file an account showing what funds he had, and that upon his failure to answer the rule, or in the event of his not exhibiting in his hands sufficient funds to pay them, an order of sale should issue to the sheriff to sell sufficient property to pay them.

On the filing of this petition a citation (p. 268) was issued, addressed to "Frederick W. Boyd, Executor, residing in said parish and State," which was returned by the Sheriff (p. 269) on the first of April, 1867, as having been served "by handing the same to Frederick W. Boyd, Jr. * * at and residing at the residence of the within named Frederick W. Boyd, Executor, in said parish, he being absent from home at the time of such service."

No further steps are shown to have been taken in this proceeding.

Nothing further appears to have been done until the 10th of February, 1868, when a petition (p. 383) of the dative executor, Frederick W. Boyd, for an injunction to restrain the sheriff from selling for taxes, certain property of the succession of Railey, verified by the oath of Frederick W. Boyd, Jr., as his agent,

was signed by *Sparrow and Montgomery as his attorneys.*

Within less than six months from that time, that is to say, on the 16th of July, 1868—*without citation or notice, or prayer for, or pretense of anything of the kind—without appearance of defendant, default, joinder of issue or evidence,* other than an *ex parte* affidavit of J. W. Montgomery—on the very day of the filing of the petition for the purpose, a snap judgment was taken on the Rev. Mr. Boyd, destituting him of the executorship; and Charles R. Egelly, who, from his own testimony, as well as that of J. W. Montgomery, is shown to have been throughout the whole transaction the mere instrument and tool of the latter in wrecking the remnant of the Railey succession, was appointed administrator. (pp. 334–5.)

To accomplish the end in view a new and base appraisement of Raleigh Plantation was requisite, and it was made accordingly. (pp. 336–7.) In the prior appraisments that plantation had been estimated as more valuable than Carondelet, which latter we have seen had been appraised and sold after the appointment of F. W. Boyd, as executor, at $39 per acre, amounting in the aggregate for the whole plantation to $45,240. Exh. 'N.' When Carondelet was appraised in the inventory of 1860 at $92,800, Raleigh was valued at $119,395. When Carondelet was appraised in the inventory of 1866 at $45 per acre, or $52,200, Raleigh was valued at $55 per acre, or $95,645. In the new appraisement now made of it, under the pretended administration of Egelly, preliminary to its sale to Wyly, it was appraised on the 4th of September, 1868. *at* $1.50 *per acre, or* $2,533.05, *at*

which price it was adjudicated to Wyly on the 20th of October, 1868! (p. 265.)

The appraisers were Michael Gingery and John W. Hays. Hay's testimony, taken by the special examiner, is to be found at p. 93. Being asked whether he made the appraisement in question or not, he answered: "I can't say, to save my life, whether I did or not. I know that I appraised property, but I don't know what property—swamp property over here somewhere. We live in the hill country. (Being shown the appraisement). I have a faint recollection of appraising that property, now that I see all that."

Gingery, the other appraiser, is dead. He was not a competent appraiser. See testimony of Ingram, (p. 81.) His name is signed to the appraisement in a clerkly hand. Yet the defendant Wyly, himself, testified in the case of *Gay* vs. *Morgan*, wherein Gingery had appraised the lands of the Oliver J. Morgan estate, in Carroll Parish, at a very low rate, that he knew Gingery well, that he was a very ignorant and illiterate man, and could not sign his own name, and that what purported to be his signature to the inventory and appraisement in the succession of Oliver J. Morgan, was not his signature.

That the valuation put upon Raleigh by Hays and Gingery was a vile one, far below its real value, is apparent not only from what has already been said, but from other testimony taken in this case.

The witness, Isam B. Beard, (p. 111,) who owns and lives on an adjoining plantation, and testifies that he has known Raleigh for over half a century, says, that he had his place appraised in the fall of

1867 or 1868, and that it was appraised at $15 an acre; that that was what most lands were appraised at in 1868; that Raleigh was worth that, and that if he had been appointed to appraise it for the purpose of a probate sale, he could not honestly have appraised it for less, (p. 119.) And to the same effect is the testimony of James Beard, at p. 164. Wm. Craig, (p. 139,) who owns an adjoining plantation, swears that Raleigh was worth $20 an acre in 1868, and that if he had been appointed appraiser he could not honestly have appraised it for less that $15 or $20 an acre.

To the same effect is the testimony of David Muir, p. 135, as to the value of Raleigh in 1868. In 1872 he bought a place within half a mile of Raleigh, containing 300 acres, for which he paid $12,000, or $40 per acre.

On the 15th of January, 1868, certain lands were sold by C. M. Beard and wife to Wm. Craig, in settlement of debt, in reference to which James Beard testifies that it adjoins the Raleigh Plantation of Judge Wyly, and is of about the same quality of land, and that the price for which it was sold to Wm. Craig was from $20 to $25 an acre.

T. B. Rhodes (p. 223) testifies that he bought the Airlie plantation, about four miles from Raleigh, containing about 1,100 acres, in 1869, for $47,000, or over $42 an acre. That the lands of Raleigh are very good lands, indeed, and that if he had been appointed to appraise them he could not have appraised them in 1868 for less than $10 or $15 an acre; and that if Mr. Newman had been at the sale he would have given that price for them, and been glad to get them (p. 307).

Charles McAlister (p. 147) also testifies, that the lands of Raleigh were worth in 1868 from $20 to $30 an acre, and that he could not honestly have appraised them forless than $10 an acre.

Le May, p. 86, Ingram, p. 77, Beard, p. 111, Craig, p. 138, and McAlister, p. 147, all testify that such lands as Raleigh *rented* in 1868 for from $8 to $10 per acre per year.

Hedrick, Deputy Sheriff and Tax Collector, (p. 151) testifies that front river cotton lands in Carroll were generally assessed for purposes of taxation in 1868 at $25 an acre, and thinks Raleigh was assessed at that value, that being the price usually given in by land owners in 1868; and that the fact that Raleigh was in part overflowed in the spring of 1868 would not have affected the assessment valuation. The assessment rolls for 1868 and 1869 were not to be found in the office of the Parish Recorder, but the roll for 1870 was, and from a certified extract from that roll, it appears that within the very brief period between the time when Raleigh was appraised and sold to Wyly at a valuation of $2,533.05, it was estimated for purposes of taxation at a cash valuation of $33,600! (p. 529.)

Furthermore, all the testimony in the case shows that Raleigh was more valuable than Carondelet. Not only did the latter place sell at Sheriff's sale, after the appointment of F. W. Boyd as dative executor for $45,240, but it was afterwards purchased *at private sale, on the* 15*th of August*, 1870, *for* $32-000, *by J. W. Montgomery!*

In answer to all this, and in attempted justification of the appraisement and sale to Wyly of the Raleigh Plantation for $2,533.05, much stress is laid upon

the condition of the place in regard to levees and liability to overflow in 1868.

The testimony of Montgomery himself (p. 169) shows that Carondelet, which is to the rear of Raleigh, is equally liable to overflow from the same causes as that place is, and that the overflow was much worse in 1867, when Carondelet sold for $45,240, than it was in 1868, when Raleigh sold for $2,533.05.

From the testimony of Beard, p. 111, and Craig, 138, who own plantations adjoining Raleigh, and of Rhodes, p. 223, it is shown that only about two or three hundred acres were overflowed in the spring of the year 1868, which did not affect the buildings on the place; that the levee was rebuilt in 1868–9, and that the place had never been overflowed from that time until the general inundation of 1882. As to the fencing, Mr. Beard, owner of an adjoining place, testifies that there was only a little fencing on the front part of Raleigh in 1868; that the plantations in the parish were fenced before the war, but *not since*, in that section. He also testifies that in 1868 there was a dwelling house on the place, a cotton gin, and outbuildings. (P. 113.)

When the testimony was being taken under order of court by the special examiner, at Lake Providence, in July, 1882, Judge Wyly, who conducted the examination in his own behalf, introduced, on the cross-examination by him of J. W. Montgomery, certain acts of sale by the sheriff to himself and others, and certain notarial acts of sale, to show that other lands had been sold at low prices as well as Raleigh was, when sold to him. Among others was an act of sale to him on the 17th of October, 1868, by Jas. A. and Selser Bass (p. 276) for the sum of $2,000 cash,

of all the right and claim of the said J. A. and S. Bass to the succession of their father and mother, and especially their right, title and claim to a certain plantation described, supposed to contain 1,400 acres. Whether J. A. and S. Bass were the sole heirs of their father and mother, and whether their claim to the plantation sold was based upon a valid title does not appear. As to the condition of the property when the purchase by Wyly was made, Mr. Beard testifies, that he knows the Bass place, about three miles below Lake Providence, thinks the levees were down there in 1868, and the place had been overflowed whenever there had been high water since 1865, that the place was in a very bad fix in 1868, ditches were about filled up with deposits, and does think there were many buildings on the place; that there was a dwelling house on the place, but it was then outside of the levee. It was between the river and the levee. Supposes the levee was put up behind the house because the bank was caving.

With regard to the other acts of sale introduced by Judge Wyly, many of the transactions are believed to have been collusive, where the property was really valuable, or to relate to the sale of poor hill lands, or lands in the swamp, overflowed, unreclaimed or abandoned, and of little real value. No opportunity was afforded complainant to offer rebutting evidence, for the reason that although by the order under which the testimony was taken, the complainant was to take her testimony within a certain time specified, and the defendant to take his testimony within a certain specified time thereafter, after which the complainant was allowed a further time to introduce rebutting testimony, and although com-

plainant's counsel were formally notified in writing that defendants would begin to take their testimony at Lake Providence on the 10th of August, 1882, when the time appointed arrived, and counsel for complainants was in attendance at Lake Providence in compli ance with the notice given, the defendant refused to proceed to take his testimony, (pp. 425-427,) and persisted in taking no action to that end until after the expiration of the delays allowed by law and the rules of court for taking testimony in the cause had expired, and the time for passing publication had elapsed, when in the month of February, 1883, an order (p. 438) was obtained under which Wyly was allowed to testify in his own behalf in the City of New Orleans, away from the parish of Carroll, where information might have been had of evidence in rebuttal of his testimony; and he then took occasion to introduce another batch of acts of sale from the sheriff to himself and others, and of copies of notarial acts, relating, as we are informed and believe, to transactions either collusive, or affecting lands which are either poor hill lands, unreclaimed swamp lands, or abandoned lands of little intrinsic value.

That the sale of lands really of great value, as those of Raleigh have been shown to be, can only be assimilated to transactions of the character of those above indicated, for purposes of wrong and perversion of justice, is obvious; and that such things have been done, and were done in the parish of Carroll, on an extensive scale, in and about the year 1868, and that J. W. Montgomery was a master and adept in the juggling performance, and how it was done, are all vey clearly and cogently made to appear in a printed statement drawn by Judge W. G. Wyly,

and addressed to the Circuit Court of the United States for the District of Louisiana, in the case of *Gay* vs. *Morgan*, a copy of which is in evidence.

And we have in this record a most notable instance of how this thing can be done in the purchase and sale of Airlie Plantation, which is about four miles from Raleigh.

On the 5th of December, 1868, Catherine Carson, executrix of the will of Jas. G. Carson, declares that by virtue of an order and decree of the Parish Court for the sale of the property belonging to the succession of Dr. Jas. G. Carson, she caused said property "to be advertised for sale for cash, with benefit of appraisement required in succession sales," and that the property was adjudicated and sold on that day at $2.50 per acre, "that being the appraised value thereof, as shown by the inventory" to J. W. Montgomery, for the aggregate sum of $2,500. (p. 331.)

In about three months after this purchase, that is to say, on the 22d day of March, 1869, J. W. Montgomery sold this Airlie Plantation to Thos. B. Rhodes for the *sum of* $47,000! (p. 332.)

Capt. Rhodes testifies, (p. 223:)

Q. Do you own the Airlie Plantation?
A. Yes, sir.
Q. What did you pay for it?
A. Forty-seven thousand dollars was the purchase price.
Q. How many acres are there in the Airlie Pplantation?
A. At the time I purchased, about eleven hundred acres.

J. W. Montgomery, as we have seen, had purchased Airlie Plantation at succession sale in December, 1868, for $2,500.00. He testifies that he bought, intending to give the benefit of the purchase to the Carson heirs; and that when he re-sold to

Rhodes, not a cent of the price was paid to any other person than the Carson heirs.

What became of the rights of creditors of the successors of Carson does not appear. Perhaps Montgomery was not *their* attorney.

At page 217 he testifies as follows :

"Q. Do you recollect who were the appraisers of the Airlie and Erie Plantations when they were sold in 1868?
A. I don't remember. It seems to me old man Valentine was. I wanted him.
Q. Will you examine that document which was filed in the succession of Carson, and which is the inventory taken on the 18th of October, 1868, and say who were the appraisers? [Handing witness paper referred to.]
A. *Michael Gingery and John W. Hays!*
Q. Will you state how Michael Gingery signs *that* appraisement?
A. I see he has *made his mark here!*"

We have been able to bring to light one other significant circumstance attending the connection of W. G. Wyly and J. W. Montgomery with one another, and with the affairs of the succession of Railey, in the parish of Carroll. The testimony was elicited only in the face of most strenuous and persistent protest and objection on the part of Wyly, and after protracted recalcitration on the part of the witness, Montgomery.

On the 19th of October, 1868, the *day before* Raleigh Plantation was sold to Wyly, J. W. Montgomery, claiming that August Belmont, of New York, was indebted to him as a lawyer in a certain amount for a fee for obtaining a certain judgment against the succession of James Railey, with recognition of mortgage on *a part of Raleigh Plantation*, sued out a writ of attachment against his client, Belmont, and seized his judgment, which was for $15,000, and W. G. Wyly, was surety on the attach-

ment bond. The attachment was executed by the seizure of the judgment the day before the sale of Raleigh to Wyly. Afterwards Montgomery obtained judgment against his client in his attachment suit against him, had the judgment seized and sold under *fi. fa.*, and bought it in himself on the 6th of November, 1869, for $666.66. It does not appear that Mr. Belmont, a well-known banker of New York, agent of the Rothschilds, was communicated with during these proceedings; at any rate, in such a way as to insure the communication reaching him. Exh. Q.

At page 169 *et seq.* of the testimony taken by the special examiner, is what follows:

Q. Judge Montgomery, was Judge Wyly ever indebted to you? *

A. Not personally indebted to me. * * *

Q. You are sure that Judge Wyly was never indebted to you?

A. I don't remember that he was ever in my debt, I don't remember it.

Q. If he had been in your debt for as considerable a sum as $10,000, do you think you would recollect it?

A. I think I would recollect it. * *

Q. I am speaking of personal transactions?

A. Yes, sir. As attorneys, we have had a great deal of business together. *I think I will say*, we have had personal transactions together.

Q. In what year was that?

A. I don't remember. * * It has been several years ago.

Q. Did that transaction relate in any way to the purchase by Judge Wyly of the Raleigh Plantation?

A. It was an outside transaction.

Q. Can you give me the year in which it occurred?

A. I don't remember. I never charged my mind with it. I had no occasion to recollect it particularly; consequently, I can't say.

Defendant objects to this line of inquiry because the witness has stated that it is a transaction with the defendant, W. G. Wyly, that has no reference to the purchase of Raleigh Plantation in 1868, but was an outside matter. * * * Said business referred to by said witness being entirely foreign and having no connection with that matter, the same is irrelevant and *res inter alios acta*.

Q. Can you tell me about what time it occurred?

A. I don't remember about when it was. I have not the slightest remembrance at all.

Q. Did the transaction to which you refer, in any way grow out of or relate to the purchase by Judge Wyly of the Raleigh Plantation?

A. No, sir, it did not. * * *

Q Are you not now the owner of a cotton plantation in this parish?

A. Yes, sir.

Q. What is the name of this plantation?

A. One of them is called Desona, the other is called Carondelet. Bought Desona about 1870 or 1871. Paid about $25,000 or $26,000 for it. The agreed price was $31.00 per acre and something over.

Q. Did you make a cash payment?

A. I did.

Q. Do you recollect the amount of the cash payment?

A. No. I don't recollect. The deeds will show what the amount was.

Q. Do you remember how that cash price was paid?

A. I believe I do. *I paid it in a note I had of Judge Wyly's. A note or some paper. I don't know whether it was a note or a draft.*

Q. How did you acquire that note?

A. From Judge Wyly.

Q. Yes, sir?

A. In a transaction between him and me.

Q. How did Judge Wyly become indebted to you.

A. In an outside transaction.

Counsel for defendant objects. The witness having stated that this transaction between himself and the defendant, W. G. Wyly, having no reference to the purchase of Raleigh Plantation by the defendant, but that it was an outside transaction of a private nature, is wholly irrelevant to the issues in this case. * * * etc., etc.

Q. When did Judge Wyly become indebted to you, sir?

A. I don't know exactly when. It was about the time I purchased that place.

Q. How was it he became indebted to you?

[Counsel for defendant urges the same objection heretofore made.]

A. It grew out of the outside transaction before alluded to, and in no way connected with the purchase of Raleigh Plantation by Judge Wyly.

Q. *Do you decline to answer that question more fully?*

A. Well, I don't care about going into my private matters. I simply say it had nothing to do with the purchase of the Raleigh Plantation by Judge Wyly.

Q. *I wish either to know the circumstances of the transaction, or else to have your categorical refusal to answer the question?*

A. *Well, I decline to answer the question,* for the reason already stated, that it had no connection whatever with Judge Wyly's purchase of Raleigh Plantation. *It was a transaction between him and me growing out of a different matter altogether,* and long subsequent to his purchase of that place.

Counsel for complainant protests against this refusal, and says that it is not for the witness to determine upon the relevancy of the evidence sought to be elicited from him. Counsel avers that he has information that this transaction has a material bearing upon the issues of this case now pending; that it is important that the Court should know the dates and circumstances and amounts involved in the transaction between witness and Judge Wyly Complainant's counsel, therefore, repeats the question, demanding specific information as to these facts, and urges the witness to reply fully thereto.

Counsel for defendant objects to any interrogatory or answer as demanded, on the ground that they are wholly irrelevant to the issues in this case. That complainant's counsel cannot cross-examine his own witness, who has stated the matters and things inquired of him to have no reference to the issues involved in this case, or the purchase of Raleigh Plantation by W. G. Wyly

Question repeated—page 172. How was it that he became indebted to you?

A. I had a judgment *against the estate of Railey. I bought a judgment against the estate of Railey and transferred it to Judge Wyly.* THAT was the outside transaction referred to!

Q. What judgment was that? A. It was a judgment of Belmont against the estate of Railey.

Q. When and from whom did you purchase it? A. I purchased it at sheriff's sale. Q. When? A. I have forgotten. I don't remember exactly what time I purchased it. * * *

Q. At what sheriff's sale did you acquire that judgment?

A. It was at a sheriff's sale *under a judgment I held* * * *Sparrow and Montgomery held the judgment. The judgment of Belmont against Railey was attached for the fees in recovering the same.* * * *

Q. How much did you pay for the Belmont judgment?

A. I don't remember now—the papers would show. (The papers show—vide exhibit Q—that he bought it on the 6th November, 1869, for $666.66, which was credited on the judgment of Sparrow and Montgomery against their client, Mr. Belmont, for $1,110 and interest.)

Q. For how much did you sell the judgment to Judge Wyly?

A. *For about twenty thousand dollars.*

(It appears from Exhibit Q that a written assignment, under date of November 9, 1870, was made "for value received," and filed the next day.)

Q. Did Judge Wyly pay you twenty thousand dollars for that judgment?

A. *Yes, sir; he did.* He gave me his notes for it, which was the same thing. I used them. * *

Q. Was this judgment against the succession of Railey?

A. Yes, sir; against the succession of Railey.

Q. Do you recollect when you sold that judgment to Judge Wyly?

A. No, sir; I do not. I think it was about that time.

Q. About what time?

A. About the time I bought the Desona place.

Q. Were those notes Judge Wyly gave you for the judgment ever paid?

A. I transferred them. I think they have all been paid.

Witness transferred the notes to D. C. Jenkins, as agent of the heirs of Deeson. He collected the money for them. Knows that the heirs got the money. * *

Q. He paid you for that judgment, you say, twenty thousand dollars?

A. *He did. Yes, sir.* That is, he gave me his notes, running four or five years, without interest.

Q. At the time, *was there any property in the Railey succession?*

A. Any property?

Q. Yes, sir.

A. *No, sir Not that I know of!* Do you mean at the time I bought the judgment?

Q. No, sir. At the time *you sold it to Judge Wyly?*

V. *No, sir; I think not. I don't think there was!*—

A lame and impotent attempt was made, rather by way of intimation or suggestion than otherwise,

to account for the payment by Wyly to Montgomery of twenty thousand dollars for a judgment claim that was not worth the paper it was written on, except for some "outside" purpose, by referring to certain cotton claims supposed to be then outstanding. It does not appear that these speculative claims had anything whatever to do with the twenty thousand dollar transaction between Wyly and Montgomery. That they were not considered or taken into account in the transaction is clear, from what Montgomery testifies to in regard to them.

Q. (p. 219.) Judge Montgomery, why was it that you did not cause the cotton claims to be inventoried for the benefit of the creditors you represented, when Mr. Egelly was appointed administrator?
A. I did not know the amount of the cotton claims. They had never been reported to me. I did not know of any cotton, or I certainly would have put it down. *I did not think it was an honest claim, and I don't think so yet.* * * I had heard that they (the Boyds) were getting up a cotton claim. *I did not believe they had any, and I don't believe it now.* I believe their cotton was all burned up.

Judge Wyly, when testifying before the Examiner in his own behalf, stated that about 1870 he had bought claims to a large amount against the succession of Railey, but failed altogether to explain *why* he had done so. He certainly did not say that his paying twenty thousand dollars to Montgomery for the Belmont judgment, was attributable in any degree whatever to his knowledge of the existence at the time of the speculative cotton claims. *He gave no reason whatever for his purchase of the Belmont judgment.*

With a view of fortifying that portion of the line of defense which rests upon the assumption that the fact of the insolvency of the succession of Railey, if established, would preclude the complainant from

recovery in this suit, Judge Wyly interrogated Judge Montgomery as to the solvency of the estate, and in reply to the question the latter declared that it was insolvent "forever and a day!"—

Is it not rather too heavy a call upon our credulity to expect us to credit the assumption that two wary and astute lawyers have so dealt with one another that one has sold to the other a very valuable plantation for a price so small, as to amount to no price at all, and afterwards sold to him a claim against an insolvent succession without assets, and of no intrinsic value whatever, for twenty thousand dollars which the latter, for some inscrutable reason, really and truly pays—and yet that there is no relation or connection between the dealings in the two cases, but that as to the former, the latter is strictly an "outside transaction!"

It is respectfully submitted that the decree should be reversed.

ROBERT MOTT,
WM. A. MAURY,
For Appellant.

FILED
DEC 14 1887
JAMES H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

MARY E. R. BOYD, *by her next friend* JAMES R. BOYD, *Appellant*,

vs.

WILLIAM G. WYLY & *als.*

No. 113.

Brief on the Facts of the Conspiracy.

WILLIAM A. MAURY,
For Appellant.

R. O. POLKINHORN, PRINTER.

SUPREME COURT OF THE UNITED STATES.

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MARY E. R. BOYD, *by her next friend* JAMES R. BOYD, *Appellant*,

vs.

WILLIAM G. WYLY & *als.*

No. 113.

Brief on the Facts of the Conspiracy.

The defendant's title rests on a fraud, the result of conspiracy between him and one John W. Sparrow and the defendant Egelly and others, too; the evidence tends to show.

The defendant was a practing lawyer, representing a great many clients, he tells us (p. 447), for many years in the region of country where this drama of fraud was enacted, the Parish of Carroll, which, Wyly tells us in his deposition, "was one of the most productive cotton parishes in the State." (p. 442.)

The defendant has also been a judge, a member of the Supreme Court of the State by appointment of Governor Warmoth in 1869.

Judge Wyly appears to belong to that small class of men in the South who came out of the wreck of the

war with a plenty of money in their pockets, and, as was to be expected, he was fully equipped to add to his accumulations through the general distress and poverty of the people among whom he lived; and this, I am warranted in saying, for, according to his own account of himself (p. 447), he was going about the country cash in hand and ready to buy land at any forced sale that happened to tempt him. In the general gloom he was hopeful and, trusting to his riches, felt that he would endure unto the end of the depression that had settled on the country. He tells us that he purchased "within a few years about 20,000 acres of land in all" (p. 447) — land lying, I believe, mostly in what is called the richest cotton belt in the world.

In this not very elevating pursuit he tells us he had it pretty much all his own way, as those around him had no means to compete with him, and strangers were not tempted to place their money in that quarter. (p. 447.)

When it would seem to be the effort of the defendant to make it appear that he was absent from Floyd, the Parish site, before the forced sale of Raleigh Plantation in October, 1868, and that he did not reach that point until the very day of the sale, let us not be deceived thereby into the belief that these circumstances make in his favor as showing a freshness of appearance on the scene that forbade any inference prejudicial to him. McGregor was no more at home on his native heath than Wyly was in Floyd and the region round about, and it is rather too large a demand on our credulity to ask us to believe that he was a stranger to any opportunity existing in that quarter to make money, or that there was

a fact touching this "*once magnificent plantation*," as he calls "Raleigh" (p. 442) that was not familiar to him. His own deposition warrants the belief that he had been lying in wait for "Raleigh," on which he had a mortgage, too, he says in his deposition, meaning, no doubt, the mortgage on a part of Raleigh, obtained after the sale in 1869, by the purchase from Montgomery of the Belmont judgment, of which we shall speak further on. (p. 448.)

This is almost, if not quite, proved by the astounding statement which Wyly twice makes in his deposition that he never made any examination of the mortuary papers of the succession of Railey, and that he knew nothing of those proceedings *until after the bill in this cause was filed* (pp. 440–441). In other words, that he bought and paid for a plantation at the Court House door, and never so much as informed himself of the character of the judicial order under which he was buying. He knew Boyd had been destituted of his position as representative of the succession of Railey, and that Egelly was his successor, and yet he paid down his money and took his title *without asking any questions.*

It is strange, then, that he should have "posted with such dexterity" to sue out a motion for the confirmation, and homologation of his title. The sale took place on the 20th October, 1868 (p. 340). *The deed was made and the money was paid on that very day*, and the petition for homologation and confirmation was filed on the 31st of the same October. Verily, "*It followed hard upon.*" 'Tis a volume of evidence, this one act, and almost establishes the guilty knowledge of this defendant.

In dealing with the effrontery that puts forth such

transparent untruth in the hope to find some "fool gudgeon" to swallow it, we are tempted to send up the lamentation of Sir George Jessel In re Moir. (21 Ch., Div. 63) "*That there is not a forensic term for impudence*" that we might apply it to this defendant, as Sir George wanted to apply it to the Bankrupt before him.

It was not therefore inappropriate to select the defendant Wyly to prepare the brief (p. 395, &c.) *on the evidenc to establish fraud* in the case of *Johnston* vs. *Waters*, (III U. S., 640) which much resembles this case and which has for some of its *dramatis personae* some of the characters that appear prominently in this record.

It is not enough for a witness to *swear*, but he must swear credibly. We affirm it to be most *incredible* swearing when Wyly says he knew nothing of those mortuary proceedings. Judging him by the ordinary rules of human conduct and by the celerity with which he sought shelter under the judgment of homologation we *must* conclude that he knew all about the proceedings on which rested the order of sale under which he bought.

The very fact of his absenting himself so long from the Parish where he resided is more than suspicious when viewed in connection with the other facts.

It is furthermore a powerful evidence of guilt that Wyly meets the charges of fraud in so mild a manner in his testimony when questioned on that subject (p. 448).

After doing all he could to make the impression that "Raleigh," that "*once magnificent*" plantation, he had become so run down and was diminishing in area so rapidly by the caving in of its river

bank, he gravely tells us (p. 443) that he has expended $25,000 in improvements on this place which one would suppose from his testimony was more than half the time under water!

We leave Wyly for the present and turn to his confederate John W Montgomery, one of the law firm of Sparrow and Montgomery.

It is not a very flattering presentation of this actor in the drama that on the 10th February, 1868, (p. 383) we find him instituting and conducting a suit in the name of the dative executor F. W. Boyd to restrain the sheriff from selling for taxes certain property of the succession *and within less than six months thereafter, to wit*, on 16th July, 1868, instituting a suit to destitute Boyd of his executorship (pp. 334–5) *on the ground of his abandonment of his office and his domicil* in the State, and *on the very same day without the pretence of notice* procuring an order of destitution.

It is this firm of Sparrow & Montgomery that Wyly in his brief in *Johnston* vs. *Waters* (pp. 399–400), charges with being parties to a conspiracy "to make, through the form of a succession sale, a simulated and fraudulent transfer of all the valuable property of the estate to themselves," &c., &c., &c.

Now, it is of this firm that Wyly says in his deposition, "*I have known Sparrow and Montgomery well for over twenty* (20) *years* (p. 440). And Judge Montgomery in his deposition says he and Wyly had had "*a great deal of business together*" and had had "personal transactions together." (p. 169.)

We are told then by these two individuals themselves that there are very intimate relations between them, and, we may infer, just such relations as are

to be found between people engaged in the execution of a common scheme of fraud.

Now, let us look at Wyly and Montgomery in combination—

Among the creditors of the succession of Railey was the well known Auguste Belmont of New York. He had a judgment against the succession for $15,000 with 8 per cent interest from 22d February, 1860. This judgment Montgomery had obtained. In October, 1869, Montgomery without any communication with Mr. Belmont, for we cannot believe his story that he could not hear from Belmont, brought suit (p. 310) for his fee of $1,114 and attached this judgment, *Wyly being his surety in the attachment bond*, p. 312), and had it sold under an execution, he, Montgomery, becoming the purchaser for $666.33, that being two-thirds of the appraised value (p. 317.)

Now Montgomery swears (p. 202), that when "Raleigh" was sold, 20th October, 1868, the succession of Railey was insolvent "*forever and a day.*" Of what value to him then in 1869 was Belmont's large judgment against the succession? Why, *maribile dictu*, he turned around and in the next month November, sold this same judgment against the succession that was *insolvent "forever and a day"* to the unwary and unsophisticated Wyly for $20,000, subrogating Wyly to his rights to the mortgage on some 400 acres of the Raleigh estate which was enforceable by the judgment.

Wyly gave his notes for the purchase money, and Montgomery swears he used these notes in paying for a plantation; and that Wyly must have paid them. (P. 173.)

Now see the exhibition Montgomery makes of himself while on the rack of complainant's searching interrogation:

At page 169 *et seq.* of the testimony taken by the special examiner, is what follows:

Q. Judge Montgomery, was Judge Wyly ever indebted to you? *

A. Not personally indebted to me. * * *

Q. You are sure that Judge Wyly was never indebted to you?

A. I don't remember that he was ever in my debt, I don't remember it.

Q. If he had been in your debt for as considerable a sum as $10,000, do you think you would recollect it?

A. I think I would recollect it. * *

Q. I am speaking of personal transactions?

A. Yes, sir. As attorneys, we have had a great deal of business together. *I think I will say*, we have had personal transactions together.

Q. In what year was that?

A. I don't remember. * * It has been several years ago.

Q. Did that transaction relate in any way to the purchase by Judge Wyly of the Raleigh Plantation?

A. It was an outside transaction.

Q. Can you give me the year in which it occurred?

A. I don't remember. I never charged my mind with it. I had no occasion to recollect it particularly; consequently, I can't say.

Defendant objects to this line of inquiry because the witness has stated that it is a transaction with the defendant, W. G. Wyly, that has no reference to the purchase of Raleigh Plantation in 1868, but was an outside matter. * * * Said business referred to by said witness being entirely foreign and having no connection with that matter, the same is irrelevant and *res inter alois acta*.

Q. Can you tell me about what time it occurred?

A. I don't remember about when it was. I have not the slightest remembrance at all.

Q. Did the transaction to which you refer, in any way grow out of or relate to the purchase by Judge Wyly of the Raleigh Plantation?

A. No, sir; it did not. * * *

Q. Are you not now the owner of a cotton plantation in this parish?

A. Yes, sir.

Q. What is the name of this plantation?

A. One of them is called Desona, the other is called Carondelet. Bought Desona about 1870 or 1871. Paid about $25,000 or $26,000 for it. The agreed price was $31.00 per acre and something over.

Q. Did you make a cash payment?

A. I did.

Q. Do you recollect the amount of the cash payment?

A. No. I don't recollect. The deeds will show what the amount was.

Q. Do you remember how that cash price was paid?

A. I believe I do. *I paid it in a note I had of Judge Wyly's. A note or some paper. I don't know whether it was a note or a draft.*

Q. How did you acquire that note?

A. From Judge Wyly.

Q. Yes, sir?

A. In a transaction between him and me.

Q. How did Judge Wyly become indebted to you?

A. In an outside transaction.

Counsel for defendant objects. The witness having stated that this transaction between himself and the defendant, W. G. Wyly, having no reference to the purchase of Raleigh Plantation by the defendant, but that it was an outside transaction of a private nature, is wholly irrelevant to the issues in this case. * * etc., etc.

Q. When did Judge Wyly become indebted to you, sir?

A. I don't know exactly when. It was about the time I purchased that place.

Q. How was it he became indebted to you?

[Counsel for defendant urges the same objection heretofore made.]

A. It grew out of the outside transaction before alluded to, and in no way connected with the purchase of Raleigh Plantation by Judge Wyly.

Q. *Do you decline to answer that question more fully?*

A. Well, I don't care about going into my private matters. I simply say it had nothing to do with the purchase of the Raleigh Plantation by Judge Wyly.

Q. *I wish either to know the circumstances of the transaction, or else to have your categorical refusal to answer the question?*

A. *Well, I decline to answer the question,* for the reason already stated, that it had no connection whatever with Judge Wyly's purchase of Raleigh Plantation. *It was a transaction between him and me growing out of another matter altogether,* and long subsequent to his purchase of that place.

Counsel for complainant protests against this refusal, and says that it is not for the witness to determine upon the relevancy of the evidence sought to be elicited from him. Counsel avers that he has information that this transaction has a material bearing upon the issues of this case now pending; that it is important that the Court should know the dates and circumstances and amounts involved in the transaction between witness and Judge Wyly. Complainant's counsel, therefore, repeats the question, demanding specific information as to these facts, and urges the witness to reply fully thereto.

Counsel for defendant objects to any interrogatory or answer as demanded, on the ground that they are wholly irrelevant to the issues in this case. That complainant's counsel cannot cross-examine his own witness, who has stated the matters and things inquired of him to have no reference to the issues involved in this case, or the purchase of Raleigh Plantation by W. G. Wyly.

Question repeated—page 172. How was it that he became indebted to you?

A. I had a judgment *against the estate of Railey. I bought a judgment against the estate of Railey and transferred it to Judge Wyly.* THAT was the outside transaction referred to!

Q. What judgment was that?

A. It was a judgment of Belmont against the estate of Railey.

Q. When and from whom did you purchase it?

A. I purchased it at sheriff's sale.

Q. When?

A. I have forgotten. I don't remember exactly what time I purchased it. * * *

Q. At what sheriff's sale did you acquire that judgment?

A. It was at a sheriff's sale *under a judgment I held* * *Sparrow*

and Montgomery held the judgment. The judgment of Belmont against Railey was attached for the fees in recovering the same. * * *

Q. How much did you pay for the Belmont judgment?

A. I don't remember now—the papers would show. (The papers show—vide exhibit Q—that he bought it on the 6th November, 1869, for $666.66, which was credited on the judgment of Sparrow and Montgomery against their client, Mr. Belmont, for $1,110 and interest.)

Q. For how much did you sell the judgment to Judge Wyly?

A. *For about twenty thousand dollars.*

(It appears from exhibit Q that a written assignment, under date of November 9, 1870, was made "for value received," and filed the next day.)

Q. Did Judge Wyly pay you twenty thousand dollars for that judgment?

A. *Yes, sir; he did.* He gave me his notes for it, whtch was the same thing. I used them. * *

Q. Was this judgment against the succession of Railey?

A. Yes, sir; against the succession of Railey.

Q. Do you recollect when you sold that judgment to Judge Wyly?

A. No. sir; I do not. I think it was about that time.

Q. About what time?

A. About the time I bought the Desona place.

Q. Were those notes Judge Wyly gave you for the judgment ever paid?

A. I transferred them. I think they have all been paid.

Witness transferred the notes to D. C. Jenkins, as agent of the heirs of Deeson. He collected the money for them. Knows that the heirs got the money.

Q. He paid you for that judgment, you say, twenty thousand dollars?

A. *He did. Yes, sir.* That is, he gave me his notes, running four or five years, without interest.

Q. At the time, *was there any property in the Railey succession?*

A. Any property?

Q. Yes, sir.

A. *No, sir; not that I know of.* Do you mean at the time I bought the judgment?

Q. No, sir. At the time *you sold it to Judge Wyly?*

A. *No. sir; I think not. I don't think there was!*—

All this was enacted *in the presence of Wyly* on 24th July, 1882, who was his own counsel on the occasion, and yet when he took the stand on 26th February, 1883, (p. 439,) Judge Wyly *doesn't open his mouth in explanation of the most inscrutable occurrence in the record!* How is this reticence explicable on any sound theory of innocence? Why did Montgomery falsely *deny* in the most solemn manner that Wyly was ever indebted to him? (p.

169.) Why did he *persist and persist* in his refusal to testify as to this extraordinary transaction of his with Wyly? Why all this holding back, if it was not that the facts sought to be withheld had a damaging bearing on the case in the witness' opinion, and he as a lawyer of long and varied practice?

Wyly cross-examined Montgomery, and the character of that pseudo cross-examination, a mere farce, the two being in complete accord and playing all through into each other's hands, of itself shows how intimate the relations of the men were. Yes, I may say there is a volume of proof in the tone of that so-called cross-examination.

But to carry out the scheme of fraud a false appraisement was necessary.

The evidence as to the qualifications of the appraisers selected, Hays and Gingery, show their unfitness for their positions. They both appear to be ignorant men. Certainly they were ignorant or corrupt. Indeed Wyly testified in Gay and Morgan that Gingery was ignorant and illiterate and could not sign his own name. (pp. 564–5) Let us see if that is not so.

In December, 1868, John W. Montgomery purchased "Airlie" at a succession sale for $2,500, that being the appraisement made by Hays and Gingery. (p. 331) In about three months after this purchase Montgomery sold "Airlie" to Thomas B. Rhodes for the sum of $47,000. (p. 332)

Railey left two plantations in Carroll Parish, Raleigh and Carondelet. In 1860 Raleigh was appraised at $119,395, (p. 353) and Carondelet at $92-800.

In 1865 Raleigh was appraised at $95,645 and Carondelet at $52,200. (p. 380–1)

In 1867, Carondelet, which was ordered to be sold with benefit of appraisement, was appraised at $39 per acre, amounting to $45,240—and on the 2d February *was sold to John W. Montgomery for* $45,240. Yet on the 20th October, 1868, "Raleigh" was sold for $2,533.05, or $1.50 per acre being the appraised value as fixed by Hayes and Gingery. Raleigh was always regarded as greatly the more valuable of the two. Carondelet was not only not so good land but it was more exposed to overflow than Raleigh.

Then again, why was it that when Gingery, who could not write his name, came to sign the appraisement of Raleigh, he took hold of the pen while McCandless wrote his, G.'s. name (pp. 58, 65), *thus making it appear that Gingery signed his name? Why was it that Gingery did not make his mark in this instance as in others?* Montgomery shows that when "Airlie" and "Erie" were appraised Gingery *made his mark.* (p. 207.)

The deposition of Egelly shows that he was a mere cypher. He says "*I will state right here, so as to shorten this thing, that I had nothing to do with it. The attorney, J. W. Montgomery, conducted all the succession matters.*" (p. 122.) This he reiterates again and again. Egelly knew nothing, examined nothing. He was a mere tool of Montgomery, who needed to get Boyd out of the way that he might complete the wreck of the Railey succession.

And then Montgomery's failure to write to Mrs. Boyd, as he did in 1865 (p. 270), and to her husband, as he did in 1875 (p. 269), seem to point to nothing short of fraudulent intention.

Can this record be read without *generating the conviction* that Wyly was deep in this conspiracy to wrest "Raleigh" from its lawful owners?

WM. A. MAURY,
For Appellant.

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Supreme Court of the United States.

MARY E. R. BOYD, BY HER NEXT FRIEND, JAMES R. BOYD, COMPLAINANT,

vs.

WILLIAM G. WYLY, CHARLES R. EGELLY AND FREDERICK W. BOYD, EXECUTOR OF JAMES RAILY, DECEASED.

Appeal from United States Circuit Court, Western District of Louisiana.

BRIEF FOR DEFENDANT.

MONROE, LA.,
Ouachita Telegraph Job Print.
1887.

Supreme Court of the United States.

MARY E. R. ROYD, BY HER NEXT FRIEND JAMES R. ROYD, COMPLAINANT,

WILLIAM G. WYLY, CHARLES R. EGELLY AND FREDERICK W. ROYD, EXECUTOR OF JAMES RAILY, DECEASED.

Appeal from United States Circuit Court, Western District of Louisiana.

BRIEF FOR DEFENDANT.

MONROE, LA.
Monroe Telegraph Job Print.
1907.

Supreme Court of the United States.

MARY E. R. BOYD, BY HER NEXT FRIEND, JAMES R. BOYD, COMPLAINANT,

vs.

WILLIAM G. WYLY, CHARLES R. EGELLY AND FREDERICK W. BOYD, EXECUTOR OF JAMES RAILY, DECEASED.

I.

STATEMENT OF THE CASE.

The plaintiff sues to have the probate sale of the Raleigh plantation, made on the 20th of October, 1868, annulled, on the ground of fraud, and to be put in possession thereof, as owner, claiming to be a *particular legatee* under the testament of her father.

The bill was filed on the 10th of September, 1881, and citation was served on the 13th of September, 1881.

On the 1st of February, 1882, the following pleas and demurrers were filed with permission of the court:

First—The plaintiff, a married woman, sues without the authorization of her husband or of the court.

Second—The will, under which she claims the plantation as a legacy, required, as did the law also, that the debts of the

deceased should be paid first. The debts have not been paid. The estate is insolvent. She has no cause of action.

Third—The complainant has never been recognized as heir or legatee under the testament; nor has an order of the probate court to put her in possession of the property of the estate been granted, which is a prerequisite to authorize her to take or claim any property of the succession in Louisiana.

Fourth—The succession of James Railey is still open and unsettled in the probate court of East Carroll and that court alone has jurisdiction to put plaintiff in possession of property under the will.

Fifth—The administrator of the succession of J. Railey, or the legal heirs of James Railey are necessary parties, but they are not made parties in this suit.

Sixth—The prescriptions of five years, under Articles 3542 and 3543, of the Civil Code of Louisiana; and the prescriptions of ten years, under Articles 3474 and 3478, of the Civil Code; and the prescription of one year, under Article 1613, of the Code of Practice, were pleaded.

Seventh—The complainant has not tendered to W. G. Wyly, or offered to return to him, the price paid by him for the property, the purchase money having been used to pay debts of the succession.

Eighth—The judgment of the probate court of Carroll parish, destituting Boyd, executor, and appointing Egelly administrator of the estate of J. Railey, the judgment ordering the sale of property of the estate to pay debts, and the judgments homologating the final account of Charles R. Egelly, distributing the proceeds of the sale of Raleigh plantation and discharging him from his trust, dated 10th of May and 7th of July, 1869, were all *judgments* of a State court, having jurisdiction of the succession; and said judgments could only have been reversed on appeal or annulled by direct action in said court, within the time prescribed by law. They were *res judicata* when this suit was filed and cannot be attacked collaterally. The prescription of one year against any action to annul said judgments is pleaded, under Article 618, of the Code of Practice of Louisiana. And the

defendant Wyly denied, under oath, all charges of fraud against him, in conformity to Rule 29.

Ninth—The sale was made under an order of a court of competent jurisdiction, and it protects the purchaser. R., p. 9, *et seq.*

On the application of complainant, the case was continued to take testimony, and the complainant having taken testimony fully upon the *merits*, it was deemed best by defendants to shorten the litigation to file an answer, which was done, reserving all the pleas, exceptions or demurrers hitherto filed, setting them up as defenses in the answer. R., p. 69 *et seq.*

Replication was filed and the case was tried. Judgment was rendered on the 9th of October, 1868, sustaining the various pleas of prescription pleaded by defendants; declaring the probate sale of the property legal and valid, quieting and maintaining the possession of said W. G. Wyly to said Raleigh plantation, and dismissing the plaintiff's bill with costs. R., p. 557.

From this judgment complainant has appealed. In order to show the utter groundlessness and falsity of the several charges made against W. G. Wyly in the bill, the charges will be stated seriatim, and the evidence applicable to each will be referred to—

I.

The bill charges that "in the month of July, 1868, the said William G. Wyly and the said Charles R. Egelly, combining and confederating together with Edward Sparrow and J. West Montgomery, both of East Carroll, attorneys at law practicing under the firm name of Sparrow & Montgomery, and with divers other persons, contriving how to wrong, injure or defraud your oratrix, under the forms of law and to transfer the apparent title to said Raleigh plantation for a nominal price to the said William G. Wyly, *covertly* taking advantage of a *temporary absence* of said *Frederick W. Boyd*, dative testamentary executor, instituted, on the 28th of July, 1868, proceedings in the parish court to destitute oratrix's husband, the said Frederick W. Boyd, of his office of executor, and to procure the appointment of said Charles R. Egelly as administrator of said succession of James Bailey. That said *Frederick W. Boyd was not* made a party to

said proceedings, either personally or by *curator ad hoc* to represent him, and *had no notice whatever of the proceedings*, nor of the subsequent proceedings connected with the sale of said Raleigh plantation herein set forth, until the same had been consumated."

The *complainant* called said Charles R. Egelly as a witness. He stated in substance that he was requested by Judge Montgomery to accept the appointment of administrator of J. Bailey's estate and he consented to do so; and that he was guided in his administration by the advice of his attorneys, Sparrow & Montgomery. On cross-examination he answered as follows: That *he had no consultation or conference* with W. G. Wyly, *in reference to the succession of James Bailey, or in reference to his appointment as administrator, or in reference to the inventory, or in reference to the sale of the property, or in reference to his administration of the succession.* R. p. 126.

He stated that at the time he was appointed administrator he resided at Lake Providence, and W. G. Wyly resided at Floyd, about 20 miles back from Lake Providence; and that the country between the two places was overflowed. That he had no recollection of seeing W. G. Wyly about the 16th of July, 1868—that he was "very slightly acquainted with him in those days." R. p. 126.

He was asked, "Did W. G. Wyly collude or confederate with you, for the purpose of effecting a fraudulent sale of the Raleigh plantation?" and his answer is, "No, sir, he did not." "Did you have any conversation with him in reference to that succession, or in reference to his purchase of the property?" His answer is, "No, sir; I did not know he was to be the purchaser of the property." R. p. 126.

"Did you have any conversation whatever with him in reference to the inventory or sale of that property?" His answer is, "No, sir." He says, "I believe the first time I saw him there (at the place of sale) was when I was crying off the property." "Did you have any conversation with him prior to the sale, or any communication with him before the sale?" "No, sir; not that I am aware of." "Did you make any

bargain or compromise with W. G. Wyly, in reference to the sale of this property, the sale of the Raleigh plantation, or in reference to the affairs of the succession of James Bailey?" "I did not to my recollection."

"Mr. Egelly, it is charged that there was a conspiracy and collusion between W. G. Wyly, Charles R. Egelly and Sparrow & Montgomery for the purpose of destituting Fred. W. Boyd as dative testamentary executor, for the purpose of getting a base and corrupt appraisement of the property of the succession of James Bailey, for the purpose of affecting an apparent transfer of the legal title of said property of the succession of James Bailey to W. G. Wyly, have you any knowledge of such corrupt combination or conspiracy?"

"There was none as far as I know—none with me at least." R. p. 127.

The *complainant* also called West Montgomery as a witness and he was questioned in relation to business transactions between W. G. Wyly and himself. Objections were made on the ground of irrelevancy, etc. See objections, R. p. 170. He was then asked, "Did the transaction to which you refer, in any way grow out of or relate to the purchase by Judge Wyly of the Raleigh plantation?" And the answer was "No, sir, it did not." R. p. 170.

The question being pressed, Montgomery answered, "Well, I don't care about going into my private matters. I simply say it has nothing to do with the purchase of the Raleigh plantation by Judge Wyly."

The question being still pressed by complainant's counsel, Judge Montgomery testified that he had purchased at sheriff's sale, under judgment in his favor against A. Belmont, the judgment of Belmont against the succession of James Bailey and had sold that judgment to William G. Wyly for his notes on long time for about $20,000, *about December*, 1870—R. pp. 173, 174—more than *two years after* the sale of Raleigh plantation.

As this is the *one fact* upon which counsel for plaintiff seemed to rely to prove the fraud *charged against W. G. Wyly* it may be well to notice it here.

A. Belmont had a judgment for $15,000, with 8 per cent interest from 22nd February, 1860, against the succession of James Bailey, with a mortgage on the Raleigh plantation. R. p. 178; Aroni testimony R. p. 450.

Anterior to the time W. G. Wyly purchased the Belmont judgment from Judge Montgomery, he had heard that Mrs. Boyd intended to bring this suit in equity.

He had then expended a large sum of money, about $25,000 in improving the plantation to make it possible to successfully cultivate it, after the levees had been put up in 1869. He had also learned that there was pending in the court of claims a suit in behalf of the estate of James Bailey, against the United States for about $90,500. As a precaution, he deemed it prudent to purchase *on time*, the Belmont judgment, as in the event that such a suit was brought and the plaintiff was successful, that judgment would have to be paid, as it was secured by mortgage on said place, and at all event, he would probably be reimbursed out of the proceeds of the claim against the United States, which he was informed was valid. R., p. 448, 178; Record of Court of Claims p. 515; Aroni's letter R. 450

This suit against the United States was filed in the Court of Claims on 19th August, 1868, and judgment in favor of the estate was rendered in May 1874 for $37,350,92, and that amount was paid to *F. W. Boyd, executor*, and the husband of complainant on the 27th of August, 1874—*six years after* he had been destituted of the office of executor, R., p. 527. Not a cent of that money has been accounted for to the probate court of Carroll parish, or applied to the payment of the debts of the succession.

It appears form the testimony of Mr. Aroni, one of the attorneys whom the plaintiff had employed to institute a suit against W. G. Wyly in 1870 or 1871, that after they had investigated the facts in the case, they declined to bring the suit and returned the written contract for fee in the case to her, because, as they stated in their letter to her:

"We find that a number of judgments and for large amounts have been obtained against the estate, *which are still existant* and

of *full validity*, so that even if we were to succeed in setting aside the sale, our labors would *not enure to your benefit*, but to that of your *father's creditors*, who could at once have the property to hold for the payment of their claims, *many of which have been legally transferred* to Judge Wyly," &c.

This letter is dated June 8th, 1872.

He testified that he knew plaintiff received the letter, because he saw the contract which he had enclosed in his said letter to Mm. Boyd, in the possession of her present attorneys.

This suit was filed 10*th* of *September* 1881, about 13 years after the sale, and AFTER, it was supposed, *the said judgments and claims against the estate*, which stood in the way when Arent wrote, *would be prescribed*. It is difficult to imagine what possible connection the purchase of the Belmont judgment by Wyly could have with his purchase at succession sale of the Baleigh plantation *more than two years before*. It is equally as incredible that W. G. Wyly would have agreed to give $30,000 for Baleigh in 1868, when the property was exposed to overflows from the Mississippi river, and in the dilapidated condition it then was, as will be seen from the testimony to be referred to further on. With the purchase of the Belmont judgment *by Montgomery*, Wyly had no connection, and that matter is not before this court, and the testimony should have been suppressed.

I will resume the examination of the testimony of plaintiff's witness, Montgomery.

He says, "I think his (Boyd's) residence here" (whilst executor) "was only temporary. He would come into the parish and then go back."

"I don't think he has" (been a permanent resident of the parish at any time since the war). "I am quite certain he was not a resident. If he had been a resident, I should never have proceeded to oust him. He was out of the State all the time. I never could see any person on the place to serve process, after 1867." "I don't think he left any such agent as I could have had a process served on."

He says he had a large amount of claims for collection against the estate—and "I had a personal claim which I was more anx-

lous to have paid than the others. It was a *privileged* claim against the estate." R., p. 179.

"I did so" (caused Boyd to be removed and Egelly appointed administrator) "because Boyd was not a recident of the State. He had abandoned his residence in the State, gone off; and I had no means to serve a process on him. There was no one to represent the property," etc. R.. p. 179, 184.

He did not represent the estate, that is, he was not in the State. The property was just lying there with nobody in possession of it." "I believe Raleigh plantation was overflowed in 1867. It was necessary to have some one appointed to look after things as they were all going to ruin," etc.

He testified that he thought it was his duty, as attorney having claims against the succession, to cause an administrator to be appointed, and that that had been his uniform practice in similar cases; and that Wm. Deason, surety on Boyd's bond, had gone into bankruptcy in 1867 or 1868 and died shortly afterward. R. pp. 180, 184, 185.

"I could not see him (Boyd) and I got an order of court for Mr. Boyd to sell property, and he went off, out of the State without trying to enforce the order of court. There was nothing done or could be done until Mr. Egelly or some one else was appointed administrator." "No, sir; he (Boyd) never paid any of them (debts) to my knowledge. He never did."

He says Boyd had gone (out of the State) more than a year before he took steps to have Egelly appointed. His attention being called to the charge that Sparrow & Montgomery, Egelly and Wyly had confederated and conspired together to defraud complainant by a sale of the Raleigh plantation, he was asked if the charge was true or false. His answer is, "It is not true. There was no confederation at all—not a particle of truth in it. The proceedings are set out by me in the usual mode of such proceedings. As for Dr. Boyd being temporarily absent, I think he was permanently absent, because he has never come back to the State since, except to visit it, on one occasion." R. p. 200.

"There was no combination, fraudulent or otherwise, in regard to the matter, either with Wyly or any one else. I provoked

the appointment of Mr. Egelly for the purpose of collecting debts which I had, and to collect my own too as far as the property would do it. I had no consultation with anybody at all about taking these proceedings or about the sale of the property. I considered my duty as an attorney to collect debts, and in doing so I took the necessary legal means to do it." R. pp. [illegible]

"I waited and waited for Dr. Boyd to return back to the State. I was anxious to collect my own debt as well as the creditors that I represented, and as there was no one here attending to it or representing the estate, I proceeded to destitute him and have somebody else appointed who would wind up the estate." R. p. 201. "Yes, sir; I have already said the property was abandoned and neglected and was getting in a worse condition every day. The *levees on the front part of it were down, the banks were caving*—the levees were down *with no prospect of going up*; and the *taxes were accumulating all the time against the property*. I considered if I waited any longer, it would be that much worse. *It was getting worse every day.*" R. p. 201.

He testified that he had judgments for clients and himself against the estate of Bailey amounting to $75,000 or $80,000, and that the estate was hopelessly insolvent. R., p. 195.

W. G. Wyly testified that he was in New Orleans from the last of May and remained there until late in September, 1[illegible], and that during that time he knew nothing about any proceedings in the case of the succession of James Bailey, and had nothing to do with the succession; and that he only knew that the Raleigh plantation was to be sold when he saw the advertisement of the sale in the newspaper a few days before the sale. R. pp. 439, 440.

He was asked the question, "Did you, prior to your purchase of the Raleigh plantation at Floyd at the succession sale of James Bailey, have any arrangement, combination, or agreement or understanding with Egelly, Sparrow & Montgomery, or any one, relative to the purchase or proposed purchase of the Raleigh plantation." He answered, "I did not."

"Had you, prior to the time that this property was advertised for sale, entered into any combination, arrangement or agreement with Sparrow & Montgomery or any person or persons, with a

view to provoke proceedings in the succession of Bailey to the end of bringing about the sale of the plantation?" "I did not. I had nothing whatever to do with it. I was a total stranger to the proceedings." R. p. 441.

The *petition* of F. W. Boyd, filed in the court of claims at Washington in August, 1868, and *signed by himself* and sworn to by him, alleges that he is a resident of Natchez, State of Mississippi. R. pp. 520, 521.

The testimony of Mrs. Boyd, plaintiff, shows that Boyd was at *their home* in Mississippi and that they *never* resided in Carroll parish. R. p. 482.

It is submitted that the testimony above quoted, which is uncontradicted and unimpeached, proves that there never was any conspiracy or agreement between Wyly and Sparrow & Montgomery or any body else to institute the proceedings to destitute Boyd of the office of executor and to appoint Egelly, and that Wyly was wholly ignorant of said proceedings—that no advantage, "covertly" or otherwise, was taken of Boyd's *temporary* absence from the State, but that proceedings were *publicly* instituted in the only court having jurisdiction of the succession to have his office declared vacant, because he had absconded from the State *permanently* and without rendering any account of his administration of the property of the succession during more than two years; and because such proceedings were *necessary* in order to protect the rights of creditors.

That Boyd had had notice of the proceedings and was a party thereto is proven by the opposition filed in his name by Goodrich, Pilcher & Montgomery, attorneys. R. pp. 835, 836. Charles M. Pilcher testified that the opposition is in his handwriting and that Goodrich, of his firm, was the legal adviser of Boyd. It is not alleged that Messrs. Goodrich, Pilcher & Montgomery were in the pretended conspiracy; nor has the authority of said attorneys been denied, either under oath or otherwise.

The application for the removal of Boyd and the appointment of Egelly was filed on the 16th day of *July*; and on the 16th day of *September*, 1868, letters of administration was issued to him. R. p. 835.

Robert J. Louden, who was chief deputy clerk of the court, testified that he recollected that Egelly was appointed administrator of the succession of J. Bailey and that Boyd was substituted as sequestor. He says, "I do not remember all the circumstances, but *remember there was a contest, or an opposition*, and that Egelly was finally appointed." R. p. 68.

"I have examined the document B and believe it to be the original opposition by Boyd to the appointment of Egelly. My impression is that it was marked, filed and put among mortuary papers of the succession of James Bailey by me as deputy clerk, though the part of the sheet upon which the title was written and the filing endorsed thereon seems to have been torn off. The handwriting of the said original opposition is that of Charles M. Pilcher of the then law firm of Goodrich, Pilcher & Montgomery." R. p. 69.

It appears therefore that F. W. Boyd was a party to the suit for his destitution, and everything seems to be regular and legal in the proceedings. No appeal was taken from the judgment and no suit to annul it was filed within one year. The judgment is *res judicata* and conclusive against every one.

II.

It is alleged that "to effect an apparent transfer of the legal title to said Raleigh plantation to said William G. Wyly, for a price merely nominal, (they) corruptly procured a *false and base appraisement* of the lands of the Raleigh plantation, *by ignorant and incompetent* appraisers, who knew nothing of the value of the property, or acted *corruptly and dishonestly* in undervaluing it."

Egelly, Montgomery and Wyly swear that they had nothing to do with *selecting* the appraisers, or *suggesting* who should be appraisers, or with *making the appraisement*.

By the law of Louisiana the Recorder had to appoint the appraisers. The appointment was made on the 4th of September, and Egelly's appointment was consumated on the 16th of September, twelve days *after* the inventory was made. Thomas D. McCandless testified that he was Recorder of the parish of

Carroll when the inventory and appraisement was made; that he made the inventory at Floyd, the parish site, as the parish was then constituted, by virtue of a commission issued from the probate court, directed to him as Recorder, authorizing and requiring him to make it. He says—

"John W. Hays and Michael Gingery were the appraisers and *they were appointed by me.* * * They did appraise the property; they signed the oaths and also the inventory." R. p. 58.

"The appraisers John W. Hays and *Michael Gingery were considered competent to make a fair* and *just appraisement*, and *were disinterested and proper* persons to appraise the plantation set out in said inventory, they having frequently acted as appraisers and *being familiar with river plantations.*" R. p. 59.

"No, I am not aware of any fraud or unfairness in the matter of taking said inventory." "No, I have no recollection that either W. G. Wyly, Charles B. Egelly, Sparrow & Montgomery were present at the making of said inventory. On the contrary, I do not think that either of them was in Floyd at the time said inventory was taken. They did *not advise*, or *in any manner take part in*, or *exercise any influence* in *the matter of taking said inventory.* R., p. 59.

There was not to my knowledge any combination, collusion or fraud between the above named parties, or any other person, to influence me or the appraisers to make an unfair and unjust inventory and appraisement. On the contrary, the *appraisement was a just* and *fair one*, and there was no fraud in the matter, nor fraud attempted." R., p. 59.

Robert J. London t stified that he was (when testifying,) notary public, Magistrate and Mayor of the town of Floyd. That he was acquainted with Thomas D. McCandless, recorder; that in 1869 he resided in Floyd, and was chief deputy clerk of the District Court, having charge of the office. He says of Thomas D. McCandless: "He was undoubtedly a faithful, competent and conscientious officer, and so regarded by everybody in the parish that knew him." R., p. 62.

He says he knew the appraisers, Hays and Gingery. "I *regard*

them as fair and competent appraisers. I should and believe that they made an appraisement in keeping with the general appraisement and value of such property, at the time, and at the usual rate at which such property was then estimated." R., p. 62.

R. S. A. McIntyre, one of the witnesses to the inventory and appraisement, testified that he knew the appraisers well and long, that they were sworn, and that they made *a fair and fair appraisement*; that neither Wyly, Egelly nor Sparrow & Montgomery were present or used any influence to affect the appraisement. R., p. 64.

He testifies that *Hays and Gingery were competent persons to make the appraisement; that they were impartial and well acquainted with the value of river plantations, and that they were frequently called to appraise property.* R., p. 64. McIntyre was sheriff of Carroll in 1868.

John W. Hays, one of the appraisers of the Raleigh plaintiffs, was examined as a witness in behalf of complainant; he testified that he did not recollect whether he had appraised the property or not; that in those days he was frequently called on to appraise property, as he was about Floyd, the parish site very often. After looking at the inventory, he stated that he then had some recollection about it.

He said he didn't know who were the attorneys. He stated that Gingery acted as one of the appraisers. That he knew Gingery well—that he was dead. That he was an honest and respectable citizen—"thought a great deal of." He was considered a man of good, fair judgment and a man of integrity. He says that they were sworn, and they appraised the property to the best of their knowledge. R., p. 94.

That he himself, was a man of means, was engaged in buying and selling lands, and had as good opportunity to any one to know the value of lands at that time. R., p. 94.

He testified that neither Wyly, Egelly nor Montgomery ever spoke to him about the appraisement or have anything to do with it. That the recorder, McClendon, asked him to act as an appraiser, and no one else spoke to him on the subject. R., p. 95, 96.

Ingraham, plaintiff's witness, testified that he considered John W. Hays, competent to appraise river plantations. He said, "yes sir; John Hays has as much sense as any body almost." R., p. 81.

Mr. L. May, a witness for complainant testified that the reputation of Michael Gingery was that of an honest and upright man. R., p. 89.

Judge Montgomery testified that Gingery was competent to appraise, and honest. R., p. 174.

Mr. Belden, witness for complainant, testified that he was acting as deputy sheriff in 1868; that he knew McCandless, the recorder, who was considered an honorable, upright and good man and a faithful officer. R., p. 159.

S. D. Oliver, a witness for plaintiff, says he knew McCandless well, that he was a conscientious and faithful officer. R., pp. 161, 162.

Not one particle of evidence was offered to prove any fraud or collusion in making the appraisement; on the contrary, the foregoing testimony of witnesses, who are *uncontradicted and unimpeached* and called by complainant, herself, proves positively there was no fraud or collusion in making said appraisement; and that it was a just, fair and reasonable appraisement, at the time.

III.

The complainant next charges *as a wrong*, that "the said base appraisement was made at the *town of Floyd, remote from the river*, and that one of the appraisers is so ignorant and illiterate as to be unable to sign his name, except by mark, and that *what purports to be his signature* to the appraisement *is a forgery*."

John W. Hays, the other appraiser was called as a witness *by complainant*, he says Gingery was sworn as an appraiser and signed said appraisement. R., p. 94.

McCandless, *the recorder*, says, "I made the inventory, appointed the appraisers, and swore them; they did appraise the property, *they signed the oath and also the inventory* as the original inventory shows." R.

"He could not sign his name (I mean the appraiser Gingery). *The way his name appears written* in a legible hand-writing on the inventory, *was that I did the writing of his name, while he held the pen*, he preferring to hold the pen while I did the writing to making his X mark." R., p. 58.

R. S. A. McIntyre, one of the subscribing witnesses to the inventory testified: "The appraiser *Michael Gingery did sign the oath* that was administered to him, *and also the inventory, in my presence*, and in the presence of the other subscribing witness, as the same purports to have been done on said inventory of the 4th September, 1866. He signed in this way: *he held the pen, while Thomas D. McCandless, recorder, wrote his name in full.* He could not write, he did not wish to make his X mark, but preferred to hold the pen while the recorder wrote his name to the oath and also to the inventory." R., p. 65.

The town of Floyd was the parish site at that time—the lands could be as well appraised there as elsewhere.

IV.

The complainant charges that "upon the *pretext* of its being necessary to pay *alleged debts* of the succession of large amounts the confederates obtained from the said parish court an order for the sale of said Raleigh plantation, *pretending* that the debts to be provided for amounted to $46,000.00, one of the debts alleged being $6,000.00 to Sparrow & Montgomery, *as attorneys of the estate.*

The evidence in the record shows that F. W. Boyd was appointed executor of the estate of J. Railey on the 28th of *September*, 1865. That his bondsman was Mr. Deason, who went into bankruptcy in the latter part of 1867 or early in 1868. R., p. 180. That Boyd received the plantation, 18 mules, plows, wagons, etc., and leased the Raleigh plantation to Pittman and himself, Boyd, in 1866.

On or about the 29th of August, 1866, an application on the part of creditors, represented by Sparrow & Montgomery, attorneys, was filed, asking for an order to sell property of the estate of Railey to pay debts, judgments, aggregating between $75,000

to $80,000. The Carondelet place alone was sold, and under an agreement, the plans was purchased by G. M. Malin Davis, *for his debt*, which was secured by first mortgage and vendor's privilege on the place. R. pp. (Montgomery) 195, 196, 197.

No further steps were then taken in the matter. Judge Montgomery testified as follows: "My impression is that it was withheld from sale—that the sale was postponed or was withheld for the *purpose of allowing* Dr. Boyd *to make a crop*. Subsequent to that, and for another reason, it was withheld *because Boyd had gone out of the State*, and there was no person to represent the estate." R. pp. 198, 199.

"I cannot say it was expressly to accommodate Dr. Boyd. But it was for the reason just given, in order to enable the Doctor to make a crop, which, of course, would furnish some means, which would reduce the creditors' claims." "You mean to make a crop in 1867?" "Yes, sir; after the sale of Carondelet place—to enable him to make a crop. *But the overflow came on early in March and the levee caved off.* The water remained on the ground till the middle of August. I state this because for that reason Dr. Boyd could not make the crop in 1867. *Then he left the State.* We waited for him, thinking he would come back. Finally, in 1868, I determined to procure the appointment of some one else, *seeing he had gone permanently.*" R. p. 199.

Boyd failed to account for the crop of 1866, or the rents for Raliegh for that year, or for the mules and other personal property he received, as executor, and abandoned the plantation in 1867 without leaving any agent to represent him in this State, notwithstanding on the 23rd March 1867, Mr. Craig and Irwin creditors, obtained an order of the court to compell him to render an account. The recognized debts, judgments, remaining unpaid after the sale of Carondelet plans, amounted to about $46,000, exclusive of interest. This is shown by the records of the probate court introduced in evidence in this case and by the testimony of J. W. Montgomery, one of the attorneys of creditors and a creditor himself.

The *claim of Sparrow & Montgomery for* $6,000 (which complainant says was a fee "*as attorneys* of the estate" and to pay

which she complains, the proceeds of the sale were applied, after paying costs, etc.,) was a *judgment of a court of competent jurisdiction rendered contradictorily with the proper parties.* It was for services "as attorneys of the estate" *long before Mr. Eyrly was appointed* to-wit: For attending the business of the succession of Bailey in Louisiana from 1839 to 1856; in having the will registered and rendered executory in Louisiana, having J. G. Carson confirmed as executor, having inventory of estate made and for advice and other services in the succession, which was inventoried at over $400,000—a large portion of the property being slaves and personal property; for rendering a provisional account for J. G. Carson in 1858 and for rendering a final account for his widow and executrix in 1867, after the appointment of Eyrly. The evidence proves that the debts existed as alleged, that there was a necessity to sell property to pay debts, and that the debt of Sparrow & Montgomery was a just debt, and it was recognized as such and classed as a privileged debt against the succession, by a *judgment* of the probate court having jurisdiction of the succession. R., p. 226. The order to sell property was granted on the application of the administrator and of creditors under articles 990, 991 and 992 of the Louisiana Code of Practice.

V.

The plaintiff next avers that "in pursuance of the fraudulent scheme aforesaid, the said confederates obtained an order on the 17th of September, 1868, for the sale of Raleigh plantation for cash, and that *after a single advertisement*, in an obscure paper, covertly and without the knowledge of your orator, or of her said husband, the said plantation was on 20th October, 1868, *fraudulently* adjudicated to William G. Wyly," &c.

The returns on the writ of the officer of court who made the sale, shows that he "did advertise the within described property to be sold on the 20th day of October, 1868, at the door of the court house in this parish, which advertisement was published in the Eaton Eagle, *the official newspaper of the parish, for more than thirty clear days*, previous to the date of sale," &c. R., p.

Montgomery testifies: "The allegation in that petition is er-

tirely a mistake, as respects the advertisement; the property was duly advertised, in the regular parish paper the number of times required by law—and more, I believe." R. p. 349.

VI.

The complainant avers that the property which had been correctly appraised in 1866 at $95,645, and which at any time since the war and is now worth a rental of ten dollars an acre, was adjudicated in 1869 to W. G. Wyly at $2,583.08. And she says this of itself is a badge of fraud.

The evidence in this record shows, what is a matter of public notoriety, that at the end of the rebellion in 1865 and 1866 cotton plantations, on the Mississippi river, were in great demand; that in a few instances private sales were made at ante-bellum prices, and that the plantations rented in some instances at fabulous prices. Cotton sold at from 30 to 50 cents per pound. But this record also shows, what is equally a matter of notoriety, that in 1866, and in 1867, there was a general, and an almost total, failure of the cotton crops. That very few made cotton enough to pay rents; and that those engaged in cotton planting were ruined and *that cotton plantations depreciated very much.*

This state of things was the result of the breaks in the levees, the consequent overflows, the disorganization and lack of discipline among the laborers, freedmen, the bankruptcy of the people and the very little demand for cotton plantations. The want of confidence in or suspicion against, the State government and of the United States government—the fear of "radical rule" depressed values generally. These are the reasons assigned by the witnesses called to the stand by the complainants as well as those called by defendants.

Mr. Ingraham, witness for complainant, said: "It was just as I have stated before. Everything was crushed here at that time. It appeared no body wanted to buy anything; there was no money in the country. Those that had rented lands around here—Mr. Douglas rented the Ford place and I saw letters to his nephew where they said they would make a *thousand bales* of cotton; they gathered *seventeen bales.* Next year they made

[illegible] two; then ran away with his [illegible]. That [illegible] and 1867. I don't think he did much in 1868. He ran off [illegible] Mr. Manning spent $17,000 and made [illegible] during these same years." R. p. 80.

The same witness says, in answer to the question what was the cause of the depression in 1868, "Well, the disaster of the crop. There was no crops made, and the impression was the country would be Africanized—would be given up to the negroes." R. p. 82.

He says, "I had lost all interest in the country and intended leaving it * * * * to go to South America." R. p. [illegible]

He says that some old citizens went to Honduras, and that others were contemplating going. R. p. 82.

He says, "I don't believe they could" (have sold real estate of any magnitude for a greater price than Raleigh plantation sold for at the time). "I don't believe anybody wanted to buy property in the country. Some bought for lawyers' fees and some for debts they could not get otherwise. That is all I know about it." R. p. 83.

This witness on cross-examination, shows that planters in Carroll parish in 1866 and 1867 utterly failed and were ruined.

Mr. LeMay, another witness for complainant, testified as follows: "I don't know of any lands selling in this country in 1868, only those that sold at public auction, and they, of course, sold for a nominal sum, as they might have bidders."

This witness says, "I would not consider that a dollar and a half an acre was the value of the property (Raleigh)—I should not have supposed so." "I cannot say, sir" (what the land was worth per acre in 1868). "The financial condition of the country was such that valuable property was at the mercy of those who happened to have a little capital. In other words, you might say that *property had no real value*. R. p.

"The years 1866 and 1867 were experimental years. Most of them lost their money and left the country after these two years." R. p. 89.

"I would say that property had scarcely any value. Property

was almost valueless—it was at the mercy of any man who had money." R. p. 91.

Again, he says, "I have answered that question before. I don't think it (Raleigh) could have sold for any more than it did sell for, *owing to the condition of the property and the condition of the country*." R. pp. 91, 92.

Mr. Hays, one of the appraisers, and a witness for plaintiff was asked if, from his knowledeg of the condition of the country and the property on the 20th of October, 1868, Raleigh could have been sold for more than $2532 08. His reply is unanswerable—"If it had been, somebody else would have bid over it." R. p. 95.

They all testify that plantations were greatly depreciated in 1868, and that at forced sales they were sold for very little, comparatively. As to the particular property in question, the Raleigh plantation, the complainant's witnesses differ widely in their estimates of its value—but none of them placed its value above $10 or $15 per acre, and *they* stated they did not believe it would have sold for that for cash at a forced sale. Beard R., p. 118, 119. Beard says, he does not think the property could have been sold for cash at anything near its value.

Dr. Devine says, that in 1868, "there was plenty of lands around there (Raleigh) that could have been bought for $5 *per acre*." "I certainly would not have valued it at *over* $5 per acre." R. 131. Dr. Devine lived near Raleigh since 1857.

Mr. William Craig, was examined as a witness for complainant, he testified that he "*took* a place for a three thousand dollar debt." The place contained 160 acres. He says, "in that neighborhood (Raleigh,) very little lands rented" in 1868. "The levees were down, and the country pretty much abandoned." He was asked what was the value of cotton lands in the parish, if sold at a cash sale—I *refer to lands on the Mississippi river*? His answer is, "I can't say, at that time, there was very little money in the country." R., p. 140.

He was asked if he thought $1,50 per acre, a fair price for Raleigh plantation in 1868, and he answered: "Well there were no persons to buy—I suppose it was all it would bring; but

I certainly do not consider that anything the value of it." R., p. 140.

He was asked, "would you have considered it proper to have offered that plantation for sale at an appraisement of $1.50 per acre?"

He answered—that I can't say, I can't answer. The property at that time was in a dangerous condition, as regards the levee. The adjoining levee was down—there was no other levee for many miles." R. 140.

On cross-examination he said there was a caving bank in front of Raleigh.

He testified that at the time when he gave his testimony there were only about 1000 acres left in Raleigh plantation; 1600 acres is the quantity mentioned in the deed to Wyly, and in the suit. So that 600 acres had caved off in about 12 years.

He was asked, "Did I understand you to say that, on account of the overflows and loss of crops in 1865 and 1867, that neighborhood (Raleigh) was pretty much abandoned, and the lands were lying out generally in that neighborhood in 1868?" His answer is: "Yes sir" R., p. 142, 143.

This witness is shown to have been a judgment creditor of the estate of Bailey to the amount of $9,000 with interest. He was one the two creditors who took a rule against Boyd, executor, to compel him to render an account in 1867. He says he saw the advertisement of the sale that he went to Floyd on the day of sale, but reached there after the sale. He said that having the amount of money, I did not expect I could make a valid bid." R.

This shows that he knew what the property had to bring, the upset price, the appraisement.

He says he told Montgomery *after* the sale that he would have been willing to give *his claim*, and about $5,000 *in a few days*, and that Montgomery said he was sorry he had not mentioned the matter sooner. Of course, his claim was nothing, and the $5,000 was not cash—he hoped he would be able to make some arrangement to borrow it. R., p. 144, 146, 148.

McAlister testified that he thought lands were worth $10 to $15

per acre—but that they could *not be sold* for so much—that he could not *have appraised the lands at less than* $10 *per acre*—that he would have thought $1,50 very low—"*though the times were very hard in the country then.*" R., p. 148, 189, 150.

The same witness testified on cross examination as follows:

"Do you recollect when your counsel, W. G. Wyly, bought a piece of land for you at Joe's Bayou in 1868?" "Yes, sir." * * * "How many acres were in that place?"

Answer—"Four hundred acres. It was appraised at $1.00 per acre." * * *

"Did I understand you to say that place was bought in by you at ($1.00) a dollar an acre?" "Yes, sir."

"Was it considered a very valuable place before the war?"

"Well I suppose it was worth fifty or forty dollars ($40.00) an acre before the war." "What caused this depreciation of property in this parish after the war?" Answer—"The Ashton brake caused the depreciation of that property back there."

"Do you believe any of these plantations could have been sold, at public auction, for as high a price as fifteen or twenty dollars per acre?"

"Well, I suppose nobody had money to give for them." R., p. 149, 150.

"Did I understand you to say you saw much of Raleigh plantation after the war?" "No, sir, very little of it."

"Is there not a bad caving front on the Raleigh plantation?"

"I don't know, I have not been along there at all." R. p. 151.

Heddrick is complainant's next witness. He is called by plaintiff to prove its value. He says he was assessor of the State and parish in '66 and 1867. Is not certain about 1868. He went out of office in 1868. He thinks lands that *were cultivated* were generally assessed at about $25 per acre. "Yes, sir, that was about the price I think for front river lands, *for lands that were protected by the levees.*" R., p. 152.

He testified that Raleigh plantation was overflowed that spring (1868). R., p. 152. In answer to the question what would he have appraised Raleigh at in 1868, if called on to do so, he said,

"I suppose if I had been called upon to appraise it, thinking as I *do now*, that I would have appraised it at about $10 per acre."

"Thinking as you did then, at what would you have appraised it then?"

Answer—"Well I can't make any estimate of the lands." At that time *a great many places sold cheap*. R., p. 152.

On cross-examination of this witness, after stating that crops of 1866 and 1867 were failures and that as deputy sheriff he had several plantations in his keeping, under seizures, and that in 1868 the financial outlook was very gloomy, the following question was asked him: "Do you think, after these disasters, it was possible to have sold property at the court house of this parish, at the valuation you have mentioned, or any one near it, if it was forced upon the market for cash?" Ans. "*I think not.*" "Have you known lands as fine as Raleigh plantation, and other lands, struck off at auction at almost a nominal price?" "I have known several places." "During 1868?" Ans. "During 1868." "From your knowledge of the situation of the country, at that time, do you believe it was possible to have obtained a greater price at auction sale, for this property than was obtained by the sheriff or the party making the sale?" Ans. "I do not, at that time." R. pp. 155, 156.

"As deputy sheriff was it not your experience that property almost invariably sold for a very small sum in 1868, when forced upon the market at a public sale?" Ans. "It did." R. p. 158.

Belden, another witness called by the complainant was asked on his examination in chief, "Would those lands be worth more than a dollar and a half an acre this year?" Ans. "If the levees are not put up, *it isn't worth that.*"

"Well suppose the levees are rebuilt, do they recover their former value?" Ans. "Well, no; not their former value. The improvements are gone and there is a deposit" (of sand) "on it. They don't recover their value for years, at least." R. p. 160.

Beard, a witness for complainant, testified that the cotton plantation Carondelet in 1868, rented at $1 per acre. R. p. 112.

He says property in 1868 was almost worthless. R. p. 113.

These are the witnesses brought forward to prove that the property, Raleigh plantation was worth $25,000.

Their testimony proves only this: That in 1882, when they testified, *some of them* thought, when testifying, that the property had been appraised low, and that they thought they would have appraised it at about $10 an acre, but that they could not say at what they would have appraised it if they had been called on in September, 1868, as the property was abandoned, had been overflowed and was subject to be overflowed, the levees being down, was in a dilapidated condition, and had a caving bank, and there was no steady or demand for such property. Davine said he had would not have appraised it at more than $5. Mr. Baldin, deputy sheriff, said, "If the levees are not put up, they ain't worth that" ($1 50).

Now the attention of the court is respectfully directed to the testimony of the defendant's witnesses and the written evidence, which is a record of what actually occurred in that parish in 1868, in reference to the sales of cotton plantations.

Judge W. G. Wyly, defendant, in 1868, did not agree with his neighbors as to the future of the country. He says, "The property that was being sold under the hammer at that time, was all sold very low. I thought I could make something by the improved condition of things in the future, and therefore, bought lands generally at public sales. At a forced sale the Raleigh plantation sold for about the usual price that was paid for such lands at that time. I mean lands exposed to overflow and where they had been abandoned. * * * I differ with many of our best citizens about the future. I thought, as great wealth had been accumulated in earlier times by investing in these lands, money could be made by making judicious investments at the time. There were many things which caused depreciation of prices in lands. The first was the overflow—the country had been overflowed in many parts of the parish quite often, and up to 1868 we had no satisfactory system of levees, or levee system, and the frequent overflows had discouraged the people very much. The citizens of that parish had sustained great losses in planting—they were very much impoverished—the parish was very poor—

there were no land buyers, from other communities, for the lands that were being forced upon the market at that time. A great many mortgages were held by commission merchants and banks and the parties who held them had very little desire to purchase lands, expensive as they were to overflow. Hence these places that were formerly very valuable were forced upon the market in 1867, 1868 and 1869, and as the people were very poor, the prices of lands ruled at a very low rate for want of bidders at the forced sales.

"There was another reason that depressed the price of lands in 1868. It was the unsettled political condition of the country. A great many of our citizens, when the constitutional convention assembled in 1868 in New Orleans, thought the country would be Africanized—they had no confidence in the government that recognized the negro as a voter—a number of them had gone to Honduras." "Citizens of Carroll had gone to Honduras and other places to escape an era of misrule, high taxation, and destruction that they thought would fall upon the country, under the administration of the Republican party. The common sentiment of the people was that the country would be Africanized. Lands were not worth anything. I did not agree with that sentiment. I believed, that in the course of time, things would get better; therefore, I thought I would invest my money in these lands, believing that in the course of eight or ten years, the disturbed condition of affairs would become better, and that the price of property would be enhanced," &c. R., p. 147. * * He testifies that "I was a practising attorney, then living at the parish site, Floyd, representing a great many clients, and was observing, of course, the sales of lands; and whenever my clients had no interest in the sale, when I was free to buy without compromising my clients, I was looking out for eligible investments. I purchased within a few years about 20,000 acres of land, in all." R. He states that the prices in the various deeds offered by defendant in evidence in this case "were the ruling prices that prevailed at the time for lands situated as they were—that is lands exposed to overflow." R. p. 447.

Over 40 *deeds* of sale of lands in Carroll parish and in the

neighborhood of the Raleigh plantation, are in evidence in this case. They show that lands sold in 1868 at from 50 cents to $3 per acre. By far the greater number of the sales were for about $1.50 per acre. R. p. 490 to 541.

Counsel for complainant try to break the force of this evidence by saying that that was the price of lands in the interior, and overflowed by the waters from the breaks at Ashton levee.

But the testimony of all the witnesses show, and common sense would suggest, that it was the fact that the place was *subject to overflow* that depreciated its value—it matters not from what point the overflow came.

In 1868, Raleigh plantation *was subject to overflow*. It was overflowed in the spring of 1867. Beard, witness for complainant, says: "It (Raleigh) was overflowed in 1867; the levee was down at Hawes Harris and backed up on the place." R. p. 117. He says "the levee was down in 1868." "It affected my place, I suppose Raleigh too. A portion of Raleigh, I know was affected," &c. R. p. 117.

Dr. Devine, another of complainant's witnesses, testifies that he "does not think the Raleigh place was *entirely* overflowed in 1867, but I think a majority of the land was damaged from the overflow." He says in 1868, the place was overflowed from the Hawes Harris and Savage crevasses. R. p. 132.

Mr. LeMay, witness for complainant, testifies that "the levee on the upper end of the place was gone, *caved off* in 1868." R. pp. 92, 93.

Montgomery says: "He (Boyd) cultivated the place in 1866. Had charge of the place in 1866. He abandoned the place in 1867. Went off without rendering any account for the time he had the place in 1866. The place was *overflowed* in 1867, early in March, 1867."

He says in 1868: "Well, as I remember the place, *it was in a delapidated condition*. The levees were all down and the houses were mostly all gone *and the place liable to overflow* * * * and the ditches were all filled up by the overflows."

"Well, sir, I think every foot of it was overflowed in 1867. I

went over it in a skiff. I was out there frequently." R. pp. 212, 197.

He was asked when the levee in front of Raleigh broke in 1868 and he answered: "I think it was down all the time from 1867. I don't think it had been put up." R. p. 212.

Craig says it was overflowed and abandoned in 1868. R. p.

So does McCandless, the recorder. R.

Mr. Rhodes, another of complainant's witnesses, says "the levee broke up on the upper edge of Raleigh in 1867, and it broke at Hawes Harris, overflowing the greater portion of Raleigh plantation in 1867. In 1868 the break was still down, but the greater part of Raleigh was not under. I think the water was not so high in the river. Still a portion of it was overflowed in 1868. R. p. 220.

The levee on Raleigh, he says, was rebuilt in *December*, 1867, and *January*, 1868."

He says "the levee was down on the front of the place (Raleigh) at the time" (when the the sale was made). R. p. 220.

He says there is a bad caving bank in front of the place and that since its purchase by Wylie the levees have had to be rebuilt *twice* in consequence of the caving. R. p. 220.

The place therefore was an abandoned, overflowed plantation, delapidated and greatly injured by the past overflows in October, 1866, when it was sold—and the same *causes* which destroyed the value of other lands in Carroll in 1867 and 1868, applied to to this plantation.

But it is submitted that it is disingenuous to pretend that it was only the lands overflowed by the Ashton breaks whose values were so greatly destroyed. The deeds in evidence show that many places *on the river* and more favorably situated than Raleigh sold for about same prices in 1867 and 1868, at *private* as well as at *public* sales. For instance—

The Pecan Grove place, *adjoining* Raleigh, on the river, sold by G. A. Sheridan, sheriff, at public sale to John W. Gross on the 5th of September, 1868, for $1734 00. It contains 2018 acres. Deed marked. *One hundred and twenty-eight* acres of the Sherwood plantation was sold by W. W. Collins, sheriff, to Mrs.

V. P. Williams, on the 1st of February, 1868, for $220. This is on the river above Lake Providence and exempt from overflow. Deed marked H. J. A. Selser Bass, sold to W. G. Wyly at *private* sale 1490 acres, with fine dwelling thereon, 4 miles below Lake Providence, on the river, on Oct. 17, 1868, for $3000. Deed marked I. George A. Sheridan, sheriff, sold to H. Frelson 1992 acres of land for $664 2/3, on the 5th of December, 1868. This place is about 4 miles from Lake Providence. Deed marked J. G. A. Sheridan, sheriff, sold to F. M. Goodrich the Foster place, just below Raleigh on the river, containing 1690 acres for $1784, on the 5th of September, 1868. Deed marked L. W. W. Collins, sheriff, sold to W. G. Wyly, on the 21 of November, 1867, the Hawes Harris places, known as Vella Vista and Caney plantation, containing 3400 acres for $650. These places are on the river, 5 miles below Raleigh. Deed marked S. W. W. Collins, sheriff, sold to H. Frelson the Geo. G. Wilson plantation, 1½ miles from Lake Providence and *free from overflow*, containing 582 acres for $3000, on the 4th of April, 1868. Deed marked 18. P. H. Hanna, at private sale, sold to F. M. Taylor the Edgwood plantation, 1 mile below Raleigh, and containing 300 acres, for $1750, on the 29th of December, 1869. Deed marked 28. W. W. Collins, sheriff, sold on the 21 of May, 1868, to Nathaniel Haughton the Goodrich Landing place, with five two story store on the place and steam gin, etc., containing 350 acres, for $2683 33. Deed marked 29. H. G. Blackman sold to M. B. Balfour on the 1st of February, 1868, the Rescue plantation, on the river 5 miles below Raleigh, containing 1183 acres, with *forty-six mules*, five horses and 2962 bushels of corn, for $11,700. Deed marked 30. Geo. A. Sheridan, sheriff, sold to F. M. Goodrich the Davidson plantation, 5 miles from Lake Providence, containing 1192 acres, for $982. Deed marked 31. J. W. Montgomery sold to Dr. J. H. D. Bowmar the Out Post plantation, 4 miles from Raleigh, containing 3000 acres, for $2010. H. G. Blackmon, administrator, sold at public auction to Louis G. Balfour the Erie plantation, containing 1638 acres for $3000. This place is about 1½ miles from the river, 3 miles from the town of Lake Providence, and is not subject to overflows. Deed marked F.

The testimony of Judge Montgomery and W. G. Wyly and other witnesses show the location and former value of these plantations.

James W. Draughan testified, "I was chief deputy of W. W. Collins sheriff, having charge of the office," in 1868.

"I have made more or less sales on the first Saturday of every month, and I, of course, was familiar with the rates at which lands were selling at forced sales in 1868. There was really no demand for lands at the year 1868, and such lands as were sold, were generally made under foreclosures of mortgages or judgments and at very low rates—say from one to $5 per acre, owing to the situation and location and improvements on the place, sold at a nominal price, some as low as fifty cents per acre at such sales."

"I have seen lands worth fifty dollars per acre before the war, sold under the hammer as low as 50 cents per acre frequently. I have frequently seen them sell at rates ranging from 50 cents to $5 per acre, owing to location and condition of improvements and probable security from overflow. For instance, the Holland tract sold for fifty cents per acre on 3d of October 1867, and that place was worth before the war, from forty to fifty dollars per acre. As sheriff, I sold the Taylor tract on 2nd October 1868 for fifty cents per acre, which before the war sold for fifty dollars per acre. On the 3rd of October 1868, I sold the Templeton place, containing fifteen hundred and sixty-five acres for total price of $1000, which place would have sold before the war at seventy-five dollars per acre. The following places to-wit:

Narcissa J. Morgan place, the Goan place, the Giner or Tiebell place, the Carson place, the J. C. Drew place, the C. A. D. Francis place, the Gory Hord place containing 1902 acres, the J. M. Galloway tract, the C. B. Richardson tract, the Seaborne Wade tract, the A. M. Waddell tract, the Currie tract, the Geo. G. Wilson tract, the Wm. Manning place, the W. L. Allen place, the Henry Goodrich place, the Out Post place, the W. H. Harris place, the J. B. Williams place, the Buckner place, the Chambliss place, the Troutman place, all would have sold before the war at prices ranging from $40 to $75 per acre, and all have

since been sold at *nearly nominal prices*; not remembering now the exact amount of such sales.

All of said places are in the alluvial lands, formerly the parish of Carroll, now the parish of East Carroll, and *many of them situated on or near the Mississippi river*, and were considered among the finest plantations in the parish before the war. R. p. 60.

For the same reasons, assigned by the complainant in her bill charging that the sale to Wyly was fraudulent, that the appraisement was *"base and vile,"* and the price *merely nominal* for a place that was formerly appraised at $55 per acre, *all these* sales and many more that were made in 1867 and 1868 in Carroll, would have to be declared *fraudulent*.

The same deputy sheriff testified, "I think I was present at the sale of the plantation to W. G. Wyly in October 1868—said sale was made by E. R. Egelly, administrator, at public auction. As far as I could see the sale was fair and open and *the price given was about the usual rates such sale were made under the hammer*—as before remarked, the prices of other lands ranged from fifty cents to five dollars per acre." R. 61.

London testified that he was deputy clerk of the District Court at Floyd in 1868. He says, "I know the country adjacent to and surrounding Raleigh was overflowed in 1867 and 1868, and I know that the levees were down in that neighborhood and the condition of the place was delapidated like that of other overflowed lands." * * "Lands were then selling under the hammer almost at a nominal price, *ranging from fifty cents to three dollars per acre*." * * "I have frequently seen good lands sold for less than *fifty cents per acre* at that time." R. p. 62.

McIntyre testified he was at Floyd at nearly every sale day (the first Saturday in every month) and I saw a great deal of property sold at succession sale and sheriff's sale. I observed that the rate at which lands were sold per acre was *very low at such sales*—the usual rates were from fifty cents to three dollars per acre, for good lands, according to their location, condition of improvements and probable security from overflow. R. 64, 65.

The complainant offered a few acts of sale, presumably to show

the value of property in Carroll, but as the sales were made *sometime after* 1868, and were made on *long credit*, they cannot be regarded as evidence of the cash value of lands, one or two years previously, when the condition of the property in the parish was different—the levees having been built in 1869.

The deeds referred to are: Exhibit S, sale by McCarroll to Montgomery on the 28th of November, 1870, *on long credit*; exhibit R, deed from Davis to Montgomery, for a debt and *on a credit*, made in 1870; exhibit T, deed from Beard to Craig [illegible] to settle a debt—see testimony of Craig, R. p. 159; exhibit W, sale by Montgomery to Rhodes *was on long credit* and made in 1870. In 1878 when the notes matured, Rhodes failed to pay, judgment was obtained and this property was advertised and offered for sale for cash, but did not sell. It was then readvertised and sold *at twelve months credit* for $1000, in May, 1876.

These were the only acts of sales of property in Carroll which the industry of counsel for complainant could discover, which they hoped might counterbalance the large number of sales shown by deeds in evidence, and the uniform testimony of nearly all the witnesses.

Before leaving this branch of the case the attention of the court is directed to the fact that mere inadequacy of price is not a ground for setting aside a conveyance of property.

"Inadequacy of consideration is not then, of itself, a distinct principle of relief in equity. The common law knows no such principle. The consideration more or less supports the contract. Common sense knows no such principle. *The value of a thing is what it will produce*; and it admits of no precise standard. It must be, in its nature, fluctuating, and will depend upon ten thousand different circumstances. * * * If courts of equity were to unravel all these transactions, they would throw everything into confusion, and set afloat the contracts of mankind. Such a consequence would of itself be sufficient to show the inconvenience and impracticability, if not the injustice, of adopting the doctrine, that mere inadequacy of consideration should form a distinct ground for relief." 1 Story's Eq. Jurisprudence, Volume 1, Section 245.

In Louisiana there is no lesion in judicial sales. Civil Code, Article 1969 declares—

"No lesion whatever, even in case of minors, can invalidate *judicial sales*, or sales of an insolvent's property made by syndics or other trustees. *Sales of property belonging to successions, or minors, directed or authorized by courts, are judicial sales*, under this provision."

See 18 An., 498, Succession of Hebrard.

James Bailey died in 1860, leaving a will which was probated the 6th of September, 1860, in the State of Mississippi, and which was registered and made executory in Louisiana on the 3d of November, 1860. James G. Carson was recognized and confirmed as testamentary executor; he qualified and letters testamentary were issued to him on November 26th, 1860.

In 1862 Carson filed an account, which was homologated.

In 1863 he removed the slaves and personal property to Texas; and he died in Texas. After the war, his widow and testamentary executrix returned to Louisiana and filed an account of J. G. Carson's administration of the estate of Bailey. One of the items of this account was the charge of Sparrow & Montgomery of $6,000.00 for their services as attorneys of the succession from the opening thereof in Louisiana till the date of the homologation of the account and tableau. R. pp. 292, 293, 296.

This account was homologated contradictorily with the attorneys of absent heirs, C. A. Defrance and Frederick W. Boyd, dative testamentary executor of the estate of James Bailey, said Boyd having been appointed on September 28th, 1865. R. p. 287.

In 1866 Pitman and Boyd cultivated the Raleigh plantation. In 1867 and 1868, it was overflowed and abandoned; no white person had charge of it; and only a few acres thereof were occupied by negroes.

In 1866, a suit was instituted by Davis, the Citizens Bank, Belmont and others, creditors, to compel the executor to file an account and for an order to sell property to pay debts.

The order to sell property was granted on the 13th of October, 1866, and directed to the Sheriff of the parish of Carroll. Under this order the Sheriff sold Carondelet plantation to Davis, and

the price was credited upon his judgment. The writ was returned without making any other sale. R. p. 262.

In March, 1867, Craig and Erwin filed a suit to compel Boyd, executor, to account. Judgment was rendered ordering Boyd to account, but he did not comply with the order. R. p. 262.

On July 16th, 1868, the Louisiana Bank, Belmont, Spencer & Montgomery and others, filed a petition praying that Boyd be declared to have abandoned his trust and absconded from the State; that Charles R. Egelly be appointed administrator of the estate of James Railey, and that property be sold to pay debts. To this suit an opposition was filed in the name of Fredrick W. Boyd, by Goodrich, Pilcher & Montgomery, attorneys-at-law. Judgment was rendered declaring the estate unrepresented, ordering an inventory of the property of the succession to be made by the Recorder of the parish, McCondless, and appointing Charles R. Egelly administrator. This judgment is dated 16th September, 1868. R. p. 259.

The inventory was made by the Recorder on September 6th 1868; and letters of administration were issued to Egelly on the 16th of September 1868. R. p. 259.

On the 17th of September, on the application of Egelly, administrator, and the Citizens Bank, an order to sell property was granted, and under that judgment Raleigh plantation was sold to W. G. Wyly. R. p. 260, 261, 262.

On the 17th day of April, 1869, Egelly rendered his final account and tableau wherein the proceeds of the sale of the Raleigh plantation is accounted for. This account was duly advertised, and homologated by the probate court on 7th day of July, 1869. R. p. 165, 166, 167.

All these orders and decrees were made by the probate court of the parish of Carroll, which had complete jurisdiction of the succession of James Railey in the parish of Carroll, and consequently of the Raleigh plantation. Comstock vs. Crawford, 3 Wall, 403. In 1869, this sale was confirmed and homologated, under a monition sued out by W. G. Wyly, the purchaser, in accordance with the laws of Louisiana. R. p. 265. About this time work upon the levees in Carroll parish was begun, and

Wyly made large and valuable improvements to-wit: He built 50 cabins, made ditches, fences, etc., amounting to upwards of $25,000, which were *necessary* to be able to cultivate the place.

During the period, when the proceedings above mentioned were being carried on, Boyd, *executor*, was living out of the State. (He *never* lived in the State,) and he filed a suit against the United States before the Court of Claims for about $90,000 for cotton which belonged to the estate of Railey, and which was said to have been captured by the Federal troops.

In 1874, long *after* his destitution as executor, he actually collected from the United States $37,350,92, for which he has never accounted. Was this the reason why this suit was brought by her next friend, and that, Fredrick W. Boyd, executor, and plaintiff's husband, was pretended to be made a party *defendant*?

For if he were suing as plaintiff and a judgment were rendered against defendant for the land, it would be returned to the executor of the estate and be liable for the debts of the succession, and furthermore, Wyly, who is the owner of the Belmont judgment, with mortgage amounting to over $40,000 00 rendered on the note given to Bowmar for part of the price of the Raleigh plantation, could compel him to pay the judgment in full out of the moneys collected from the United States.

II.

The attention of the court is now asked to the special defenses already stated and numbered from I to VIII, inclusive.

I.

The plaintiff, a married woman, is not authorized or assisted by her husband to bring this suit. Daniel's Chancery Pleadings and practice, page 109.

III, IV AND V.

The succession of James Railey is still unsettled in the probate court of East Carroll; the succession and heirs are both necessary parties to this suit. Neither the succession nor the heirs are parties. This record shows that after the discharge of Railey as administrator, *Sterling Austin*, as the agent of H. O. Hatley, son of James Railey, and of the widow of C. R. Railey, another son of J. Railey, was appointed administrator of the estate on the 15th of *March*, 1879; and that the claim against the Union Bank, and the claim against F. W. Boyd, were investigated and approved. R. pp. 204, 205.

The succession has never been closed.

The pretext of making F. W. Boyd, a party defendant, as executor, *thirteen years after* his removal from the office by a judgment of a competent court, and at least *fourteen years* after he *had left the State permanently*, is a farce and a fraud.

There was no service of citation or supoena served on him.

II.

The will of James Railey declares, "It is my will that all my property in Louisiana and Arkansas be kept together as I may leave it, *until all my just debts are paid* and desire that my friend James G. Carson of Carroll parish take the two plantations, Raleigh and Carondelet under his management and my friend James Carson, Jr., of Natchez take my Deerfield plantation in Arkansas under his supervision, until my debts are paid," etc.

After all my debts are paid together with any legacies I may make, I wish my friends James G. and James Carson, Jr., to divide as equally as possible my Raleigh and Carondelet plantations, giving Raleigh to my daughter, Mary E. R. Boyd, with all the negroes and stock, etc., and to my son, Oby Bailey, Carondelet with the negroes, stock, etc."

Deerfield is to be given to his grandson, Ernest H. Bailey, should he live to be 21 years. To his son Charles Randolph Bailey, he requests his executors to pay annually $1000. "The annuity to be paid Charlie will be retained one-third from each Carondelet, Raleigh and Deerfield," etc.

"*After all my just debts are paid,* I give my neice Belle Bailey and to my neice Cornelia Bailey * * * the sum of five thousand dollars. R. p. 348.

It is plain that the testament required, as does the law, that *the debts shall be paid before any legacies can be.*

The law requires that we shall be just before being liberal. Civil Code 1012 declares—

"In obtaining possession of the effects of a succession, the heirs shall not be permitted, under any pretense whatsoever to have an actual delivery of any property of such succession which may be in suit, or to receive any such money of succession when there shall be claims thereon pending in court, unless they previously give bond with good and sufficient security, if the plaintiff's in such suits require it." "The heirs can * * take seizin from the executor, on offering him a sum sufficient to pay the moveable legacies, and on complying with the requirements of Article 1012." Civil Code, Article 1671.

(10 R. 459; 12 Rob., 548; 25 An., 379.)

In the succession of George B. Ogden, 10 Roberson Louisiana Reports, p. 459, the court said:

"When an administrator has been appointed to a succession, the widow in community and the tutrix of the minors, who are necessarily beneficiary heirs, *have no right to interfere, and have nothing to claim,* UNTIL *the debts* of the estate *are paid,* and the administration has legally terminated.

"The sale of the property of such an estate for the payment of

The evidence in this record leaves no room for doubt that

In 25 An. p. 870, Daniel Phelan vs. Charles A. it was held, that "where the plaintiffs claimed one-half of a certain lot of ground as heirs to their deceased mother, who had an undivided community of interest in said lot, now in possession of said defendant, plaintiffs *had no cause of action*, inasmuch as it was not alleged and shown that the community between the plaintiffs' father and mother had been settled, and that anything remained after paying the debts thereof, or that plaintiffs had been put in possession of their mother's estate."

Suppose there had been fraud in the sale of Raleigh, unless she were *injured* thereby, she has no cause to complain. There must be *both fraud and injury* to entitle one to relief in equity. Story's Eq. Jurisprudence 2 Vol. p. 218.

"Fraud is not to be presumed, but must be established by proof—circumstances of mere suspicion, leading to no certain results will not, in either a court of law or equity, be deemed sufficient ground to establish fraud. 2 Vol. Story's Equity Jurisprudence p. 199.

Labeo defined fraud to be any cunning deception or artifice used to circumvent, cheat or deceive another. This is pronounced to be the true definition in the Digest. Story's Equity Jurisprudence. 2 Vol. 197.

It is substantially the definition of fraud given in the Louisiana Civil Code.

"Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantages to the one party, or to cause an inconvenience or loss to the other. C. C. Art. 1847.

Fraudulent contracts are not absolutely null, but are voidable only. C. C. Art. 1881.

VI.

The complainant has never tendered to W. G. Wyly, the purchaser, the purchase money given for Raleigh; and which has been distributed in payment of debts, under a judgment of a court having jurisdiction.

This is a *condition precedent* to the institution of a suit to rescind a sale, in Louisiana. Barrell vs. Ganche, 24 A. p. 824.

In 30 La. An., p. 1258, the Supreme Court of Louisiana said: "This doctrine has been recognized and enforced in [illegible] cases, in which it was decided that the offer to return the consideration received is a condition precedent to the right of action to rescind a sale or contract. Janin vs. Franklin, 4 La. 192; [illegible] vs. Ballard, 19 La. 281; Stockton vs. Downey, 3 An. 174; [illegible] bers vs. Wortham, 7 An. 118. In Brown vs. Bowny, 30 An. [illegible], the mortgagor died, and the mortgagee proceeded via [illegible], in ignorance of her death. The sale, the whole proceeding, was void, but the money was applied to the payment of the mortgage debt. The heir of the mortgagor sued to recover the property. This court recognized the doctrine as announced in Colron vs. Daquin, and the subsequent cases cited above and said: "The court, under the facts disclosed by this record, would give the plaintiff this property, without first requiring him to make restitution; and when this want of restitution or offer of restitution was set up, by way of exception, the court properly maintained it."

The cases of Colron vs. Daquin, and Barrill vs. Gouche and other decisions of the Supreme Court of Louisiana, were cited approvingly in Davis vs. Gaines, 104 U. S. Reports, p. [illegible].

VII.

The judgment of the probate court of Carroll parish destituting F. W. Boyd of the office of executor, and appointing [illegible] administrator of the estate of James Bailey, dated the [illegible] of September, 1868; the judgment, ordering the property to be sold to pay debts, based on the inventory and appraisement made on the 4th of September, dated on the 17th of September, [illegible]; the judgment of the court approving said sale and approving and homologating the tableau of distribution and final account of the Administrator Egelly, dated on the 10th of May, 1869—are *all final and conclusive judgments* against all persons. They should have been corrected on *appeal or by an action in nullity*. The time for either has long since elapsed. Code Practice, [illegible], 613; 28 An., p. 807; 32 An., 469; 30 An., 947.

In McGoon vs. Scales, 9 Wall., p. 30, this court said: "The

doctrine of this court, and of all the courts of this country, is firmly established, that if the court in which the proceedings took place had jurisdiction to render the judgment which it did, no error in its proceeding, which did not affect its jurisdiction, will render the proceedings void; nor can such error be considered when the judgment is brought collaterally into question."

Article 618 declares, C. Practice "That when a judgment has been obtained, *through fraud* on the part of plaintiff, or because the defendant had lost or mislaid the receipt given him by the plaintiff, the action for annulling the judgment must be brought *within the year after* the fraud has been discovered, or the receipt found." 32 An., 409.

It will be seen from the testimony of Mrs. Mary E. R. Boyd, the complainant, that she says she was informed of the sale to Wyly *in the fall of* 1868—that is, immediately after the sale, which occured on the 20th of October, 1868. Rep. 430

There is no allegation in her bill *when* she had discovered any fraud in the proceedings, and the pretense, in her testimony that she did not file the suit earlier, after Labat & Aroni, attorneys, gave up the case, because she had not the means or because she didn't know that her attorneys had given up her case, is disproved by the record of the suit of Boyd, executor, *her husband*, against the United States, in the Court of Claims, in which he recovered $37,350 62 of the moneys of the estate, and has kept it from the creditors; and by the testimony of Mr. Aroni, of the firm of Labat & Aroni.

The attention of the court is respectfully directed to her refusals to answer all questions put to her on cross-examination on that subject. Her answers were, "I decline to answer it" (the question. "Why do you decline to answer it?" "I think it best."

"Had you any knowledge of any suits carried on in the Court of Claims for the recovery of money from the United States Government for cotton captured during the war?"

Answer—Mr. Beckwith, I have already declined to answer that question. * * * I think best not to answer.

Question—Had you at any time between 1869 or 1870 and the time when you instituted this suit here, obtained from your husband any notice or knowledge of what proceedings were had or being had in the succession of your father?

A.—Well, I respectfully decline, Mr. Beckwith to enter into that subject.

Q.—You decline to answer that question?

A.—Yes, sir. R. p. 442.

And this witness is the complainant in a suit in equity!

She states that after she had employed Labat & Aroni in 1873, "I heard nothing of it for some years. I supposed it was going on."

Q.—Well, what next?

A.—Mr. Mott then took the case.

Q.—State what your attorneys Labat & Aroni did in the case?

A.—They did not do anything.

Q.—Then you ascertained your attorneys Labat & Aroni had not done anything?

A.—Yes, I ascertained it through Col. Charles R. Bailey.

Q.—But when?

A.—I can't tell you what year it was. I don't know what year it was—it was some years afterwards, 1875 or 1876, I am not sure. * * *

Q.—Then during all this period from 1872 to 1876 you supposed there was a suit pending against the defendant, Wyly, to recover back the plantation?

A.—No, sir.

Q.—You know there was no suit then?

A.—Well, I had been informed before that time that Mr. Aroni had given up the suit.

Q.—When were you so informed?

A.—I don't know Mr. Beckwith.

Q.—Well can't you approximate it, was it before you came down here in 1878?

A.—I can't say when it was.

Q.—Well, about how many years ago was it, you can approximate it?

A.—I don't known, Mr. Beckwith.

Q.—You remember the time there was such a serious epidemic here in 1878, don't you?

A.—Yes, sir.

Q.—Was it before that time?

A.—I think it was before that time.

She testified she never received any letter from Labat & Aroni or wrote to them. R. 486.

Aroni testified as follows: "I was written to by Mrs. F. W. Boyd whilst I was a member of the firm of Labat & Aroni, in reference to her claim against Judge W. G. Wyly, which she desired to be enforced for the purpose of recovering a plantation in Carroll parish, belonging to her father, J. Bailey. I don't remember the name of the plantation."

"The correspondence must have commenced either late in 1871 or early in 1872."

"There were some negotiations about fees, and the contract for fees was sent to me by Mrs. Boyd, who I believe lived in Chicago or somewhere northwest, I believe. The terms would have been satisfactory. But after careful investigation of the whole matter I came to the conclusion that I would not succeed in bringing about the desired result if I were to institute suit. * * *

"When I found out, or rather, when I had concluded that I could not succeed in her suit, *I returned the contract to her, inclosing the same in a letter which I wrote to her on 8th June*, 1872," and he read the letter from his letter book. R. p. 450.

"I am very certain the letter was mailed. I have got good reasons why I know it. I am also certain it was received by Mrs. Boyd, *because the contract which I returned to her was shown to me by her counsel here in New Orleans.*"

"A few months ago."

It would have been "*best*" for her if the complainant had "*declined*" to put herself on the witness' stand.

The complainant's own testimony, the letter of Aroni for Hunton & Grover and Labat & Aroni and Aroni's testimony make it certain that she knew of the sale of Raleigh to Wyly in the fall of 1868; that she engaged the services of Labat & Aroni

late in 1871 or early in 1872, and they associated with themselves Huston & Grover, to sue for the rescission of said sale to Wyly, that after careful examination of the case, they returned to him the contract for suit and declined to prosecute the case, in an June, 1872, for reasons stated in that letter, among others, that there were large judgments against the estate, some of which Wyly held, which would have to be paid, and to pay which debts the plantation would be resold, even should they succeed in annulling the sale to Wyly. And the evidence shows that there was no possibility for the plantation to sell for enough to pay the debts.

There is no reason, therefore, why the prescription, or statute of limitation, pleaded by defendant, should not apply since *there had been fraud*, which, of course, there was not.

The prescription of five years under Article 3542 of the Civil Code bars *all actions for the nullity or rescission of contracts.*

The Code declares:

"The following actions are prescribed *by five years*:

That for *the nullity or rescission of contracts, testaments or codicils.*

That for the reduction of excessive donations.

That for the rescission of partitions and guaranty of the parties.

This prescription only commences against minors after their majority."

As to everybody else, *but minors*, it commences to run from the date of the act, or the probate of the will, and as to minors from their majority.

The prescription of five years under article 3543, cures all informalities in public sales. That includes advertisement, appraisement, etc. 104 U. S. Reports p. 399, Davis vs. Gaines. The article is in the following words:

"All informalities connected with or growing out of any public sale, made by any person authorized to sell at public auction, shall be prescribed against by *those claiming under said sale*, after the lapse of five years, from the time of making it, *saving against minors, married women or interdicted persons.*"

These two prescriptions have no reference to good or bad faith. They would protect one who knew of the vices or informalities of the act sought to be annulled as well as to one ignorant thereof. They are essentially statutes of *repose*, established in the interest of society.

The prescription *acquirendi causa*, under article 3474 of the Civil Code, makes perfect the ownership of real property, after ten years—

"The ownership of immovables is acquired by a longer or shorter time, according as the possessor has been in good or bad faith, as laid down in the following paragraph." C. C. Art. 3473.

"Immovables are prescribed by ten years, when the possessor has been in good faith, and held by a just title." C. C. Art. 3474.

This is the only prescription which requires good faith under laws of Louisiana.

In Wells vs. Wells, 30 An. La. Reports, p. 936, the court says: "In determining this question it is a matter of no moment whether Mrs. Winn *was or was not owner* in law or fact; *nor whether*, in law or in fact, *she had a right to sell this property*. If prescription could only be pleaded in favor of a party who had acquired from the *true* owner, or one having legal authority to sell, it would be a very useless right. The very object of this prescription is to quiet titles of those who may have acquired from persons not owners, or having no right to sell; "as happens to him," says Art. 3451, Civil Code, "who buys a thing which he supposes belongs to the person selling it to him, but which in fact belongs to another." Again, Art. 3450 says: "By the term *just title*, in cases of prescription, we do not understand that which the possessor may have derived from the real owner, for then no prescription would be necessary, but a title which the possessor may have received from any person, whom he honestly believed to be the real owner, *provided the title was such as to transfer the property*."

Article 3485: "By the phrase *transfer the property* we understand not such a title as shall have really transferred the property, but a title which by its nature would have been sufficient to transfer the property, provided it had been derived

from the real owner, such as a sale, exchange, etc." So that the questions in this case are not whether Mrs. Winn was the owner, and had the right to sell the property, but whether the *purchasers at the time of buying believed* that she was owner, and whether the attempted transfer was sufficient in *terms and of nature* to transfer the property, had it eminated from the true owner. If so, and if the defendant had possessed as owners under such transfer, peaceably, publicly, continuously and unequivocally, for ten years before this suit was brought, the prescriptive title is complete. See C. C., 3458.

There is no doubt that Mrs. Winn did in 1882, by public act duly recorded, sell and deliver to defendants, E. M. and J. Wells, the land in controversy at the price of $20,000 cash. *Both* [illegible] *swear* that they, bona fide, believed her to be the absolute owner, and knew nothing of her holding the position of executrix of the deceased husband, of whom she was heir. That she treated the property as her own, and sold it to them as her own, and that they and their vendees have had peaceable, public and continuous possession as owner ever since. Their evidence is, we think, in the main, corroborated by that of Judge Ryan, who has for years, in fact since Winn's death, been the attorney of the succession. There is no proof to the contrary of these statements. There is no evidence to show that E. M. and J. Wells at the time of the purchase knew that Mrs. Winn was executrix. It matters not what they knew afterwards, since "it is sufficient if possession has commenced in good faith." C. C. 3448.

"*Good faith is always presumed in matters of prescription; and he who alleges bad faith* in the possessor *must prove it.*" C. C. 3447. * * * The judgment below maintained defendant's title, and is, we think, correct." 30 An. 986.

Everything decided in the case just quoted is applicable to this case. Wyly purchased at a public sale from one whom *he believed, at the time, had authority to sell* the property; his title was duly recorded, he took possession under his title as owner, and has had peaceable, public and continuous or undisturbed possession since his purchase on 20th October, 1888, till the institution of

this suit in September, 1881, *nearly 13 years after the beginning of his possession.*

The defendant swears that he bought in good faith believing that the administrator Egelly had authority to sell the property; and this testimony is corroborated by the testimony of Montgomery, Egelly, McCandless, McIntyre, Draughan and others; *and there is no evidence to the contrary.*

"*Good faith is always presumed in matters of prescription*; and he who alleges bad faith in the possessor must prove it." Civil Code, Art. 3481, 3482.

His title is an act of sale, perfect in form and duly recorded.

Article 3487 declares, "To enable one to plead the prescription treated of in this paragraph, it is necessary that the possession be distinguished by the following incidents:

First—That the possessor shall have held the thing in fact and in right, when, however, it is only necessary to complete a possession already begun, the civil possession shall suffice, provided it has been preceded by corporal possession.

Second—That the possession shall have been continuous and uninterrupted, peaceable and public and unequivocal; a clandestine possession would give no right to prescribe, but *he who possesses by virtue of a title*, cannot be considered as a clandestine possessor, *for his title leads to the supposition that the possession commenced in good faith, and that is sufficient to enable him to plead prescription.*

The evidence of Wyly is that immediately after his purchase "by virtue of his title" he took actual possession of the plantation and commenced to make necessary improvements thereon, such as opening ditches, making fences, building cabins, etc., and that he expended upwards of $25,000 in making said necessary improvements. R. p. 442. This is corroborated by Rhodes. R. p. 237 and others.

It is submitted that if any defect or illegality ever existed in defendant's title (which however is denied), his title was perfected and made complete by the prescription of ten years, under Articles 3474 and 3478 of the Civil Code of Louisiana.

In Becknell vs. Comstock, 113 U. S. R, the court said:

"Under the statute of Iowa 10 years of such possession is a perfect bar to any action to recover the land, *and this applies to suits in chancery as well as actions at law.*" * * *

This court has more than once held that the lapse of time provided by the statutes makes a perfect title. In Lessee of Wall vs. Warren, 2 Black, 599, it is said that "the lapse of time limited by such statutes, not only bars the remedy, but it extinguishes the right, and vests a perfect title in the adverse holder." And this doctrine is repeated in Crozall vs. Sheerod, 5 Wall., 269, and in Dickerson vs. Colgrove, 100 U. S. 583.

See 108 U. S. R. p. 409—Coddington vs. Railroad Co.

VIII.

Under the laws and jurisprudence of Louisiana and under the decisions of this court, the defendant, Wyly, is protected by the decree or judgment of the probate court ordering the sale. He is not required to look beyond the judgment of the court having jurisdiction of the thing. 13 La., 431, Leland's heirs vs. Mercer; 14 An., 622, Succession of Gerson; 21 An., 507, Wood vs. Lee; 18 An., 590; 18 An., 493, Succession Hebrand; 2 Peters, 168, Thompson vs. Tolmie.

In Davis vs. Gaines, 104 United States Reports, p. 391, this court said:

"Such sales are, therefore, protected by the rule that a title acquired at a decretal sale of lands, made by a court in the exercise of competent jurisdiction, is not rendered invalid by the reversal of the decree." * * * In the case last cited (1 Wall., 627, 634) this court said: "Although the judgment or decree may be reversed, yet all rights acquired at a judicial sale, while the decree or judgment was in full force and which it authorized, *will be protected. It is sufficient for the buyer to know that the court had jurisdiction and exercised it, and that the order, on the faith of which he purchased, was made and authorized the sale.*"

In Lessee of Grignon vs. Astor, 2 Howard, 319, cited approvingly in Davis vs. Gaines, 390, it is said: "The granting the license to sell is an adjudication upon all the facts necessary to

give jurisdiction," * * * and "proceedings in a probate court to sell property of a decedent have been held to be proceedings *in rem, to which all claiming under the decedent are parties.*"

The case of Lelanne's heirs vs. Moreau, 13 La. Reports, p. 431, also quoted approvingly in Davis vs. Gaines, the court said: "Sales directed or authorized by courts of probate are judicial sales to all intents and purposes, and *the purchaser is protected by the decree ordering them,*" * * * and "that the decree of the court of probate ordering a sale of property of minors is so purely *in rem* and against the property, that a sale made under it extinguishes all the mortgages existing in the name of the owner of the property sold."

In Comstock vs. Crawford, 3 Wall., 403, it is declared that "It is well settled that when the jurisdiction of a court of limits and special authority appear upon the face of the proceedings, its action cannot be collaterally attacked for mere error or irregularity. The jurisdiction appearing, the same presumption of law arising that it was rightly exercised, as prevails with reference to the action of a court of superior and general authority." * * * The recitals are *prima facie* evidence of the facts recited. They show the jurisdiction of the court over the subject. What follows was done in the exercise of its judicial authority, *and could only be questioned on appeal*, the mode provided by law." * * "And its action, however irregular, cannot be impeached collaterally."

In Newell vs. Norton, &c., 3 Wall. p. 267, this court said: "It is enough to say we find ample testimony to support the decision, if believed; and that we again repeat what we have often decided, that in such cases, parties should not appeal to this court with any expectation that we will reverse the decision of the courts below, because counsel can find in the mass of conflicting testimony enough to support the allegations of appellant, if the testimony of the appellees be entirely disregarded."

In February, 1860, James Bailey died. In September, 1881, *twenty-one* years after, Mary E. R. Boyd, a particular legatee under the testament, instituted this suit to annul a sale of real

property, made under an order of the probate court of Carroll parish 13 years before.

She has never appeared in the probate court to claim any part of the estate or to be recognized either as heir at law or as legatee under the testament. See stipulation, R. p. 437.

The debts of the testator, her father, have never been paid, being greater than the value of his estate. It is admitted therefore, that complainant could not have been injured by the sale. Her husband after his removal from the office of district recorder of J. Reilly, without authority collected [illegible] from the United States on account of a claim for cotton in favor of said estate, and has never accounted for it. The answers of Mrs. [illegible] Boyd and her refusal to answer questions and the surrounding circumstances, justify the court to believe that she received a part, at least, of this $37,000, which property belonged to the creditors of the estate.

The only seeming irregularity in the whole proceedings, is that no citation to Frederick W. Boyd, the absconding executor, was found among the papers or proved—(there is no evidence that a citation did not issue, be it noted, and the maxim omnia rite esse acta, would apply here,) but, if none were issued and served on Boyd, it was dispensed with, by the appearance made for him by his attorneys, Goodrich, Pitcher & Montgomery, who filed an answer opposing Boyd's removal and Reilly's appointment, and the judgment of the court is conclusive. See R. p. 335, testimony of R. J. Loudon, R. p. 62. Besides, the purchaser Wyly, was protected by the subsequent decree of the probate court authorizing and directing the sale of the property to pay debts, on the application of the administrator, and of creditors under articles 990, 991, 992 of the Code of Practice of Louisiana.

If human testimony is not worthless, if the forty odd deeds of sales of plantations in the neighborhood of Raleigh plantation were not all frauds, perpetrated by the different Sheriffs, appraisers and parties to said sales, the Raleigh plantation sold for its full market value at cash sale, in its condition at the time. At least one witness, Belden (R. p.), testified that Raleigh

was not worth $1 50 per acre, when he testified in 1882, if the levee were not put up on its front.

It has cost the defendant over $25,000 to repair the place so as to be able to cultivate it. It is certain that said plantation would not sell for that sum at a cash sale now.

There is not a title of evidence to impugn the good faith and honesty of the defendant in buying at that sale. His own testimony, corroborated by that of several witnesses, is that his purchase was fair and honest and at a price which was the average for property similarly situated then selling in that parish.

The complainant has offered in evidence the *brief* of W. J. Wyly filed in another suit, and his testimony given in that suit. A motion to suppress this evidence was made.

But if the evidence be considered, and it prove anything, it shows that Wyly could not have been engaged in any conspiracy to defraud with either Gingery or Montgomery, or he would not have assailed them as he did in his brief nor would he have testified that Gingery could not write, if he had known that there was anything wrong in the appraisement signed by him in the Bailey succession.

It is therefore submitted that the judgment appealed from should be affirmed with costs.

Respectfully submitted,

JNO. T. LUDELING,

Counselor.

APPENDIX.

Opinion of the Judge of the United States Circuit Court,

Western District of Louisiana, October Term, 1853.

BOYD vs. WYLY AND OTHERS.

1.—JUDICIAL SALE—FRAUD—CONSPIRACY.

If there were any fraud or conspiracy in the proceeding, of which there is no proof, Wyly, the purchaser, was not a party to it, and knew nothing of it.

2. SAME—CONFUSION OF PROPERTY.

Complainant's losses, if any, are attributable to the indifferent management and neglect of the executor, her husband, and to the physical and financial prostration of the country in that section of Louisiana, at the period when the sale was made, rather than to any acts of the defendants.

3. SAME—PRESUMPTION—ANSWER FOUND ON FILE.

The presumption "*omnia rite esse acta*" would justify the Court in treating as genuine a paper purporting to be an answer, and found among the papers of the suit, although there is no information of the filing thereof by the clerk, in the absence of proof to the contrary. But the testimony of one of the members of the firm, whose signature is attached to the answer, shows he wrote the answer, and he thinks it was filed, and that the outside page of the double sheet was torn off.

4. SAME—LAPSE OF TIME.

Under the circumstances, and after the lapse of more than 10 years, a judgment rendered in the case by a court of competent jurisdiction will not be treated as a nullity.

5. SAME—PLEADING—STATUTE OF LIMITATIONS.

Under the rules of pleading or practice, in equity it is necessary that the cause or reason which prevented the statutes of limitation or prescription from running in the particular case should be stated in the bill, in order to be permitted to offer evidence thereof. This has not been done by complainant.

6. SAME—STATUTE OF LIMITATIONS A BAR.

But disregarding this rule and giving complainant the benefit of all of her evidence, there is no good reason shown why the statutes of limitation or prescription should not apply in this case.

7. SAME—PURCHASER AT JUDICIAL SALE—COLLATERAL ATTACK.

A purchaser at judicial sale, in Louisiana, need not look beyond

the jurisdiction and decree of the court ordering the sale. The truth of the record concerning *matters within its jurisdiction cannot be disputed* in an action like this.

14 La., 146; 7 Rob., 66; 10 Rob., 396; 14 La. Ann., 154; 22 La. Ann., 175; 25 La. Ann., 55; 28 La. Ann., 755.

In equity.

Boatner & Boatner and *Mott, Sanders & Kelly*, for claimant.

John T. Ludeling, J. R. Beckwith and *W. G. Wyly*, for respondent.

BOARMAN, J. The complainant alleges that she is the owner of a valuable plantation in Carroll parish, known as the "Raleigh plantation," which was bequeathed to her as a particular legatee by her father, James Railey, who died A. D. 1860. She avers that W. G. Wyly and others, mentioned in the bill, conspired together to fraudulently deprive her of the said plantation by causing it to be conveyed to said Wyly under the forms of a judicial sale, which was made in fraud and without authority in law in October, 1868; that these defendants covertly, taking advantage of the absence of F. W. Boyd, her husband, and executor of the Railey estate, instituted suit against him to destitute him from office in the probate court, Carroll parish, and in July, 1868, caused C. R. Egelly to be appointed administrator of the said succession; that said Boyd was not cited, and made no voluntary or authorised appearance in the suit, and knew nothing of the proceedings under which the sale to Wyly was made until after the said illegal and fraudulent sale had been completed; that the removal of Boyd and the appointment of Egelly was without any effect in law; that Egelly under the pretense of paying debts against the succession, a large part of the debts being for lawyers' fees claimed as due to the law firm of which one of these defendants was a member, caused the said plantation to be sold without any notice to claimant, who alleges that she, under her father's will, was and is, *as a particular legatee*, the owner of said plantation; that these defendants caused the plantation to be appraised, in fraud of and in injury of her rights, by incompetent and unworthy appraisers, at the vile price of $2588 05, at which price it was adjudicated to Wyly, when it was worth much more, and had been appraised, two

years before, at over $95,000, and he is now and has been since October 20, A. D. 1868, in possession of the valuable plantation and its large revenues under said fraudulent sale.

The prayer of the bill is that the will under which she claims as a particular legatee be declared valid, and that she be put in possession as owner of the plantation bequeathed to her; that Wyly, having purchased in bad faith, be decreed to account to her for the revenues and rents thereof since October 20, A. D. 1868.

This statement of her suit leaves out much of the details of the bill, and is but a summary of the charges therein; but it is sufficient for the purpose of disposing of the case, under the view I have taken of the defensive pleadings, which discloses matters in bar, in abatement, and in answer to the charges of complainant.

The defendant Wyly admits having bought the Raleigh place for $2533 05 at said succession sale. Though not required by complainant to answer under oath, he has filed answer, under oath, denying that he at any time ever combined with the defendants named, or with any one else, to defraud, wrong, or injure, or deprive, either under the forms of law or otherwise, Mrs. Boyd of her rights or property; that he knew nothing of or concerning the proceedings by or under which she claims to have been injured; that he knew nothing of the removal of Boyd, or of the other proceedings under which the sale of the Raleigh plantation was invoked, until after he purchased the same; that he did not know the plantation was to be sold until he saw the advertisement in the newspaper published in Caddo parish. In addition to this denial, which is affirmed by the evidence of himself and by the testimony of other witnesses, he pleads the prescription of five and ten years, and all others applicable.

Art. 3478, Civil Code: "He who acquires an immovable in good faith and by just title prescribes for it in ten years."

3481. "Good faith is always presumed in matters of prescription. * * *"

3487. "* * * By term 'just title' is meant 'a title which the possessor

may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the property.'"

The mortuary papers in Railey's succession show that suit was instituted by the Louisiana Bank and other creditors of his succession to remove Boyd from the executorship, because he had left the State, and abandoned his trust; and judgment, indicating in its language the presence of all necessary parties, removing him, and appointing Egelly administrator, was rendered July 18, 1868. But it is contended that Boyd was not cited and made no appearance in the suit, and, in default of citation or of voluntary appearance, Boyd's executorship could not be affected by the judgement, which was an absolute nullity that under the proceedings which followed, all of which were procured by fraud and wrongful conspiracy, Wyly could not have purchased in good faith; and that his illegal title cannot, as against his equitable and legal rights, be made good or cured by any statute of limitations.

To pass upon the plea of prescription provided for in article 3478, Civil Code—the only one I think it necessary to consider—it becomes necessary to examine but a part of the testimony in the immense volume of evidence presented to the court. But, before discussing the evidence bearing particularly upon the plea of prescription, it may be well for me to state here that on the hearing of this case, at which time most, if not all, of the evidence was read to the court and illustrated by the argument of learned counsel, and on a most careful consideration of the evidence subsequently made, I was and am now clearly of the opinion that if there was any fraudulent conspiracy or corrupt collusion by or between any of the several persons mentioned in the bill, to deprive complainant of her property, Wyly knew nothing of it, and was in no way a party to the wrongful acts.

In the early years after the war the testimony in this case affirms, what is historically known to be true, that the section of the State in which the Raleigh plantation is situate was, by overflows and other physical and moral causes, almost entirely bereft of its old-time prosperity and value. The plantation was

greatly damaged by previous overflows, and had but [illegible] fencing, and it was shown by defendant Wyly that he [illegible] after purchasing it, expended $25,000 in improvements. [illegible] dant has shown, whatever may have been the general [illegible] that depreciated property on the Mississippi river in [illegible], [illegible] many thousands of acres of land, as valuable as the [illegible] in question, were sold for prices not unlike the paltry [illegible] which Wyly bought his place. The testimony as to the [illegible] of ready money, as to the price for which much [illegible] sold when disposed of at forced sale, and as to the [illegible] moral, and physical bankruptcy of the country, [illegible] believe that the complainant and the unpaid creditors of her father's succession were the victims to the [illegible] ment and neglect of the executor, and to physical and [illegible] prostration of the country, which was apparent everywhere in Louisiana in the early years following the end of the war, rather than to the acts of any of these several defendants.

Was Boyd cited or properly represented in court when the judgment removing him was rendered? Among the [illegible] papers found in the succession of Bailey, in the probate court of Carroll parish, a paper purporting to be an opposition or [illegible] ance of Boyd, executor, appears, in a much worn and [illegible] condition. It is contended that this paper is wrongfully [illegible] these papers, and it was never filed before the judgment, if [illegible] all. Upon the genuineness and legal effect of this paper [illegible] the matter of Boyd's voluntary appearance. It is a single [illegible] of legal cap paper, with no indorsement or filing on the [illegible] it, as is usual with papers of like nature. There is nothing in the evidence to show that it came surreptitiously among the mortuary papers. If there was no evidence one way or the other touching the origin, the authorship, and filing of the paper, the presumption of the law that all judicial proceedings are presumed to be regular until the contrary is shown, would sustain the genuineness of the papers, and warrant the court in giving to it its full legal effect. But there is testimony for and against its having been properly filed in the suit to remove Boyd. The testimony of Pilcher, a member of the law firm of Goodrich,